401(a)(3)] (as in effect on September 1, 1974).

(d) Election by church to have participation, vesting, funding, etc., provisions apply.

(1) In general. If the church or convention or association of churches which maintains any church plan makes an election under this subsection (in such form and manner as the Secretary may by regulations prescribe), then the provisions of this title relating to participation, vesting, funding, etc. (as in effect from time to time) shall apply to such church plan as if such provisions did not contain an exclusion for church plans.

(2) Election irrevocable. An election under this subsection with respect to any church plan shall be binding with respect to such plan, and, once made, shall be irrevocable.

26 USCS § 411 (2005)

§ 411. Minimum vesting standards.

(a) General rule. A trust shall not constitute a qualified trust under section 401(a) [26 USCS § 401(a)] unless the plan of which such trust is a part provides that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age (as defined in paragraph (8)) and in addition satisfies the requirements of paragraphs (1), (2), and (11) of this subsection and the requirements of subsection (b)(3), and also satisfies, in the case of a defined benefit plan, the requirements of subsection (b)(1) and, in the case of a defined contribution plan, the requirements of subsection (b)(2).

(1) Employee contributions. Except as provided in paragraph (12), a plan satisfies the requirements of this paragraph if an employee's rights in his accrued benefit derived from his own contributions are nonforfeitable.

(2) Employer contributions. A plan satisfies the requirements of this paragraph if it satisfies the requirements

of subparagraph (A) or (B).

(A) 5-year vesting. A plan satisfies the requirements of this subparagraph if an employee who has completed at least 5 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions.

(B) 3 to 7 year vesting. A plan satisfies the requirements of this subparagraph if an employee has a nonforfeitable right to a percentage of the employee's accrued benefit derived from employer contributions determined under the following table:

Years of service:	The nonforfeitable percentage is:
3	20
4	40
5	60
6	80
7 or more	100.

(C) [Deleted]

(3) Certain permitted forfeitures, suspensions, etc. For purposes of this subsection--

(A) Forfeiture on account of death. A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that it is not payable if the participant dies (except in the case of a survivor annuity which is payable as provided in section 401(a)(11) [26 USCS § 401(a)(11)]).

(B) Suspension of benefits upon reemployment of retiree. A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that the payment of benefits is suspended for such period as the employee is employed, subsequent to the commencement of payment of such benefits--

(i) in the case of a plan other than a multiemployer plan, by the employer who maintains the plan under which such

benefits were being paid; and

(ii) in the case of a multiemployer plan, in the same industry, the same trade or craft, and the same geographic area covered by the plan as when such benefits commenced.

The Secretary of Labor shall prescribe such regulations as may be necessary to carry out the purposes of this subparagraph, including regulations with respect to the meaning of the term "employed".

(C) Effect of retroactive plan amendments. A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because plan amendments may be given retroactive application as provided in section 412(c)(8) [26 USCS § 412(c)(8)].

(D) Withdrawal of mandatory contribution.

(i) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that, in the case of a participant who does not have a nonforfeitable right to at least 50 percent of his accrued benefit derived from employer contributions, such accrued benefit may be forfeited on account of the withdrawal by the participant of any amount attributable to the benefit derived from mandatory contributions (as defined in subsection (c)(2)(C)) made by such participant.

(ii) Clause (i) shall not apply to a plan unless the plan provides that any accrued benefit forfeited under a plan provision described in such clause shall be restored upon repayment by the participant of the full amount of the withdrawal described in such clause plus, in the case of a defined benefit plan, interest. Such interest shall be computed on such amount at the rate determined for purposes of subsection (c)(2)(C) on the date of such repayment (computed annually from the date of such withdrawal). The plan provision required under this clause may provide that such repayment must be made (I) in the case of a withdrawal on account of separation from service,before the earlier of 5 years after the first date on which the participant is subsequently re-employed by the employer, or the close of

the first period of 5 consecutive 1-year breaks in service commencing after the withdrawal; or (II) in the case of any other withdrawal, 5 years after the date of the withdrawal.

(iii) In the case of accrued benefits derived from employer contributions which accrued before September 2, 1974, a right to such accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that an amount of such accrued benefit may be forfeited on account of the withdrawal by the participant of an amount attributable to the benefit derived from mandatory contributions (as defined in subsection (c)(2)(C)) made by such participant before September 2, 1974, if such amount forfeited is proportional to such amount withdrawn. This clause shall not apply to any plan to which any mandatory contribution is made after September 2, 1974. The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this clause.

(iv) For purposes of this subparagraph, in the case of any class-year plan, a withdrawal of employee contributions shall be treated as a withdrawal of employee contributions on a plan year by plan year basis in succeeding order of time.

(v) For nonforfeitability where the employee has a nonforfeitable right to at least 50 percent of his accrued benefit, see section 401(a)(19) [26 USCS § 401(a)(19)].

(E) Cessation of contributions under a multiemployer plan. A right to an accrued benefit derived from employer contributions under a multiemployer plan shall not be treated as forfeitable solely because the plan provides that benefits accrued as a result of service with the participant's employer before the employer had an obligation to contribute under the plan may not be payable if the employer ceases contributions to the multiemployer plan.

(F) Reduction and suspension of benefits by a multiemployer plan. A participant's right to an accrued benefit derived from employer contributions under a multiemployer plan shall not be treated as forfeitable solely because--

(i) the plan is amended to reduce benefits under section 418D [26 USCS § 418D] or under section 4281 of the Employee Retirement Income Security Act of 1974 [29 USCS § 1441], or

(ii) benefit payments under the plan may be suspended under section 418E [26 USCS § 418E] or under section 4281 of the Employee Retirement Income Security Act of 1974 [29 USCS § 1441].

(G) Treatment of matching contributions forfeited by reason of excess deferral or contribution. A matching contribution (within the meaning of section 401(m) [26 USCS § 401(m)]) shall not be treated as forfeitable merely because such contribution is forfeitable if the contribution to which the matching contribution relates is treated as an excess contribution under section 401(k)(8)(B) [26 USCS § 401(k)(8)(B)], an excess deferral under section 402(g)(2)(A) [26 USCS § 402(g)(2)(A)], or an excess aggregate contribution under section 401(m)(6)(B) [26 USCS § 401(m)(6)(B)].

(4) Service included in determination of nonforfeitable percentage. In computing the period of service under the plan for purposes of determining the nonforfeitable percentage under paragraph (2), all of an employee's years of service with the employer or employers maintaining the plan shall be taken into account, except that the following may be disregarded:

(A) years of service before age 18,

(B) years of service during a period for which the employee declined to contribute to a plan requiring employee contributions;

(C) years of service with an employer during any period for which the employer did not maintain the plan or a predecessor plan (as defined under regulations prescribed by the Secretary);

(D) service not required to be taken into account under paragraph (6);

(E) years of service before January 1, 1971, unless the

employee has had at least 3 years of service after December 31, 1970;

(F) years of service before the first plan year to which this section applies, if such service would have been disregarded under the rules of the plan with regard to breaks in service as in effect on the applicable date; and

(G) in the case of a multiemployer plan, years of service--

(i) with an employer after--

(I) a complete withdrawal of that employer from the plan (within the meaning of section 4203 of the Employee Retirement Income Security Act of 1974 [29 USCS § 1383]), or

(II) to the extent permitted in regulations prescribed by the Secretary, a partial withdrawal described in section 4205(b)(2)(A)(i) of such Act [29 USCS § 1385(b)(2)(A)(i)] in conjunction with the decertification of the collective bargaining representative, and

(ii) with any employer under the plan after the termination date of the plan under section 4048 of such Act [29 USCS § 1348].

(5) Year of service.

(A) General rule. For purposes of this subsection, except as provided in subparagraph (C), the term "year of service" means a calendar year, plan year, or other 12-consecutive month period designated by the plan (and not prohibited under regulations prescribed by the Secretary of Labor) during which the participant has completed 1,000 hours of service.

(B) Hours of service. For purposes of this subsection, the term "hours of service" has the meaning provided by section 410(a)(3)(C) [26 USCS § 410(a)(3)(C)].

(C) Seasonal industries. In the case of any seasonal industry where the customary period of employment is less than 1,000 hours during a calendar year, the term "year of service" shall be such period as may be determined under regulations prescribed by the Secretary of Labor.

(D) Maritime industries. For purposes of this subsection,

in the case of any maritime industry, 125 days of service shall be treated as 1,000 hours of service. The Secretary of Labor may prescribe regulations to carry out the purposes of this subparagraph.

(6) Breaks in service.

(A) Definition of 1-year break in service. For purposes of this paragraph, the term "1-year break in service" means a calendar year, plan year, or other 12-consecutive-month period designated by the plan (and not prohibited under regulations prescribed by the Secretary of Labor) during which the participant has not completed more than 500 hours of service.

(B) 1 year of service after 1-year break in service. For purposes of paragraph (4), in the case of any employee who has any 1-year break in service, years of service before such break shall not be required to be taken into account until he has completed a year of service after his return.

(C) 5 consecutive 1-year breaks in service under defined contribution plan. For purposes of paragraph (4), in the case of any participant in a defined contribution plan, or an insured defined benefit plan which satisfies the requirements of subsection (b)(1)(F), who has 5 consecutive 1-year breaks in service, years of service after such 5-year period shall not be required to be taken into account for purposes of determining the nonforfeitable percentage of his accrued benefit derived from employer contributions which accrued before such 5-year period.

(D) Nonvested participants.

(i) In general. For purposes of paragraph (4), in the case of a nonvested participant, years of service with the employer or employers maintaining the plan before any period of consecutive 1-year breaks in service shall not be required to be taken into account if the number of consecutive 1-year breaks in service within such period equals or exceeds the greater of--

(I) 5, or

(II) the aggregate number of years of service before

such period.

(ii) Years of service not taken into account. If any years of service are not required to be taken into account by reason of a period of breaks in service to which clause (i) applies, such years of service shall not be taken into account in applying clause (i) to a subsequent period of breaks in service.

(iii) Nonvested participant defined. For purposes of clause (i), the term "nonvested participant" means a participant who does not have any nonforfeitable right under the plan to an accrued benefit derived from employer contributions.

(E) Special rule for maternity or paternity absences.

(i) General rule. In the case of each individual who is absent from work for any period--

(I) by reason of the pregnancy of the individual,

(II) by reason of the birth of a child of the individual,

(III) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or

(IV) for purposes of caring for such child for a period beginning immediately following such birth or placement,

the plan shall treat as hours of service, solely for purposes of determining under this paragraph whether a 1-year break in service has occurred, the hours described in clause (ii).

(ii) Hours treated as hours of service. The hours described in this clause are--

(I) the hours of service which otherwise would normally have been credited to such individual but for such absence, or

(II) in any case in which the plan is unable to determine the hours described in subclause (I), 8 hours of service per day of absence,

except that the total number of hours treated as hours of service under this clause by reason of any such pregnancy or placement shall not exceed 501 hours.

(iii) Year to which hours are credited. The hours described in clause (ii) shall be treated as hours of service as provided in this subparagraph--

(I) only in the year in which the absence from work begins, if a participant would be prevented from incurring a 1-year break in service in such year solely because the period of absence is treated as hours of service as provided in clause (i); or

(II) in any other case, in the immediately following year.

(iv) Year defined. For purposes of this subparagraph, the term "year" means the period used in computations pursuant to paragraph (5).

(v) Information required to be filed. A plan shall not fail to satisfy the requirements of this subparagraph solely because it provides that no credit will be given pursuant to this subparagraph unless the individual furnishes to the plan administrator such timely information as the plan may reasonably require to establish--

(I) that the absence from work is for reasons referred to in clause (i), and

(II) the number of days for which there was such an absence.

(7) Accrued benefit.

(A) In general. For purposes of this section, the term "accrued benefit" means--

(i) in the case of a defined benefit plan, the employee's accrued benefit determined under the plan and, except as provided in subsection (c)(3), expressed in the form of an annual benefit commencing at normal retirement age, or

(ii) in the case of a plan which is not a defined benefit plan, the balance of the employee's account.

(B) Effect of certain distributions. Notwithstanding paragraph (4), for purposes of determining the employee's accrued benefit under the plan, the plan may disregard service performed by the employee with respect to which he has received--

(i) a distribution of the present value of his entire nonforfeitable benefit if such distribution was in an amount (not more than the dollar limit under section 411(a)(11)(A) [26 USCS § 411(a)(11)(A)]) permitted under regulations prescribed by the Secretary, or

(ii) a distribution of the present value of his nonforfeitable benefit attributable to such service which he elected to receive.

Clause (i) of this subparagraph shall apply only if such distribution was made on termination of the employee's participation in the plan. Clause (ii) of this subparagraph shall apply only if such distribution was made on termination of the employee's participation in the plan or under such other circumstances as may be provided under regulations prescribed by the Secretary.

(C) Repayment of subparagraph (B) distributions. For purposes of determining the employee's accrued benefit under a plan, the plan may not disregard service as provided in subparagraph (B) unless the plan provides an opportunity for the participant to repay the full amount of the distribution described in such subparagraph (B) with, in the case of a defined benefit plan, interest at the rate determined for purposes of subsection (c)(2)(C) and provides that upon such repayment the employee's accrued benefit shall be recomputed by taking into account service so disregarded. This subparagraph shall apply only in the case of a participant who--

(i) received such a distribution in any plan year to which this section applies, which distribution was less than the present value of his accrued benefit,

(ii) resumes employment covered under the plan, and

(iii) repays the full amount of such distribution with, in the case of a defined benefit plan, interest at the rate determined for purposes of subsection (c)(2)(C).

The plan provision required under this subparagraph may provide that such repayment must be made (I) in the case of a withdrawal on account of separation from service, before the

earlier of 5 years after the first date on which the participant is subsequently re-employed by the employer, or the close of the first period of 5 consecutive 1-year breaks in service commencing after the withdrawal; or (II) in the case of any other withdrawal, 5 years after the date of the withdrawal.

(D) Accrued benefit attributable to employee contributions. The accrued benefit of an employee shall not be less than the amount determined under subsection (c)(2)(B) with respect to the employee's accumulated contributions.

(8) Normal retirement age. For purposes of this section, the term "normal retirement age" means the earlier of--

(A) the time a plan participant attains normal retirement age under the plan, or

(B) the later of--

(i) the time a plan participant attains age 65, or

(ii) the 5th anniversary of the time a plan participant commenced participation in the plan.

(9) Normal retirement benefit. For purposes of this section, the term "normal retirement benefit" means the greater of the early retirement benefit under the plan, or the benefit under the plan commencing at normal retirement age. The normal retirement benefit shall be determined without regard to--

(A) medical benefits, and

(B) disability benefits not in excess of the qualified disability benefit.

For purposes of this paragraph, a qualified disability benefit is a disability benefit provided by a plan which does not exceed the benefit which would be provided for the participant if he separated from the service at normal retirement age. For purposes of this paragraph, the early retirement benefit under a plan shall be determined without regard to any benefits commencing before benefits payable under title II of the Social Security Act [42 USCS §§ 401 et seq.] become payable which--

(i) do not exceed such social security benefits, and

(ii) terminate when such social security benefits

commence.

(10) Changes in vesting schedule.

(A) General rule. A plan amendment changing any vesting schedule under the plan shall be treated as not satisfying the requirements of paragraph (2) if the nonforfeitable percentage of the accrued benefit derived from employer contributions (determined as of the later of the date such amendment is adopted, or the date such amendment becomes effective) of any employee who is a participant in the plan is less than such nonforfeitable percentage computed under the plan without regard to such amendment.

(B) Election of former schedule. A plan amendment changing any vesting schedule under the plan shall be treated as not satisfying the requirements of paragraph (2) unless each participant having not less than 3 years of service is permitted to elect, within a reasonable period after the adoption of such amendment, to have his nonforfeitable percentage computed under the plan without regard to such amendment.

(11) Restrictions on certain mandatory distributions.

(A) In general. If the present value of any nonforfeitable accrued benefit exceeds $ 5,000, a plan meets the requirements of this paragraph only if such plan provides that such benefit may not be immediately distributed without the consent of the participant.

(B) Determination of present value. For purposes of subparagraph (A), the present value shall be calculated in accordance with section 417(e)(3) [26 USCS § 417(e)(3)].

(C) Dividend distributions of ESOPs arrangement. This paragraph shall not apply to any distribution of dividends to which section 404(k) [26 USCS § 404(k)] applies.

(D) Special rule for rollover contributions. A plan shall not fail to meet the requirements of this paragraph if, under the terms of the plan, the present value of the nonforfeitable accrued benefit is determined without regard to that portion of such benefit which is attributable to rollover contributions (and earnings allocable thereto). For purposes of this

subparagraph, the term "rollover contributions" means any rollover contribution under sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e)(16) [26 USCS §§ 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e)(16)].

(12) Faster vesting for matching contributions [Caution: For applicability of this paragraph, see § 633(c) of • P.L. 107-16, which appears as a note to this section.]. In the case of matching contributions (as defined in section 401(m)(4)(A) [26 USCS § 401(m)(4)(A)]), paragraph (2) shall be applied--

(A) by substituting "3 years" for "5 years" in subparagraph (A), and

(B) by substituting the following table for the table contained in subparagraph (B):

Years of service:	The nonforfeitable percentage is:
2	20
3	40
4	60
5	80
6 or more	100.

(b) Accrued benefit requirements.

(1) Defined benefit plans.

(A) 3-percent method. A defined benefit plan satisfies the requirements of this paragraph if the accrued benefit to which each participant is entitled upon his separation from the service is not less than--

(i) 3 percent of the normal retirement benefit to which he would be entitled if he commenced participation at the earliest possible entry age under the plan and served continuously until the earlier of age 65 or the normal retirement age specified under the plan, multiplied by

(ii) the number of years (not in excess of 33 1/3) of his participation in the plan.

In the case of a plan providing retirement benefits based

on compensation during any period, the normal retirement benefit to which a participant would be entitled shall be determined as if he continued to earn annually the average rate of compensation which he earned during consecutive years of service, not in excess of 10, for which his compensation was the highest. For purposes of this subparagraph, social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after such current year.

(B) 133 1/3 percent rule. A defined benefit plan satisfies the requirements of this paragraph for a particular plan year if under the plan the accrued benefit payable at the normal retirement age is equal to the normal retirement benefit and the annual rate at which any individual who is or could be a participant can accrue the retirement benefits payable at normal retirement age under the plan for any later plan year is not more than 133 1/3 percent of the annual rate at which he can accrue benefits for any plan year beginning on or after such particular plan year and before such later plan year. For purposes of this subparagraph--

(i) any amendment to the plan which is in effect for the current year shall be treated as in effect for all other plan years;

(ii) any change in an accrual rate which does not apply to any individual who is or could be a participant in the current year shall be disregarded;

(iii) the fact that benefits under the plan may be payable to certain employees before normal retirement age shall be disregarded; and

(iv) social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after the current year.

(C) Fractional rule. A defined benefit plan satisfies the requirements of this paragraph if the accrued benefit to which any participant is entitled upon his separation from the

service is not less than a fraction of the annual benefit commencing at normal retirement age to which he would be entitled under the plan as in effect on the date of his separation if he continued to earn annually until normal retirement age the same rate of compensation upon which his normal retirement benefit would be computed under the plan, determined as if he had attained normal retirement age on the date on which any such determination is made (but taking into account no more than the 10 years of service immediately preceding his separation from service). Such fraction shall be a fraction, not exceeding 1, the numerator of which is the total number of his years of participation in the plan (as of the date of his separation from the service) and the denominator of which is the total number of years he would have participated in the plan if he separated from the service at the normal retirement age. For purposes of this subparagraph, social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after such current year.

(D) Accrual for service before effective date. Subparagraphs (A), (B), and (C) shall not apply with respect to years of participation before the first plan year to which this section applies, but a defined benefit plan satisfies the requirements of this subparagraph with respect to such years of participation only if the accrued benefit of any participant with respect to such years of participation is not less than the greater of--

(i) his accrued benefit determined under the plan, as in effect from time to time prior to September 2, 1974 or

(ii) an accrued benefit which is not less than one-half of the accrued benefit to which such participant would have been entitled if subparagraph (A), (B), or (C) applied with respect to such years of participation.

(E) First two years of service. Notwithstanding subparagraphs (A), (B), and (C) of this paragraph, a plan shall not be treated as not satisfying the requirements of this

paragraph solely because the accrual of benefits under the plan does not become effective until the employee has two continuous years of service. For purposes of this subparagraph, the term "years of service" has the meaning provided by section 410(a)(3)(A) [26 USCS § 410(a)(3)(A)].

(F) Certain insured defined benefit plans. Notwithstanding subparagraphs (A), (B), and (C), a defined benefit plan satisfies the requirements of this paragraph if such plan--

(i) is funded exclusively by the purchase of insurance contracts, and

(ii) satisfies the requirements of paragraphs (2) and (3) of section 412(i) [26 USCS § 412(i)] (relating to certain insurance contract plans),

but only if an employee's accrued benefit as of any applicable date is not less than the cash surrender value his insurance contracts would have on such applicable date if the requirements of paragraphs (4), (5), and (6) of section 412(i) [26 USCS § 412(i)] were satisfied.

(G) Accrued benefit may not decrease on account of increasing age or service. Notwithstanding the preceding subparagraphs, a defined benefit plan shall be treated as not satisfying the requirements of this paragraph if the participant's accrued benefit is reduced on account of any increase in his age or service. The preceding sentence shall not apply to benefits under the plan commencing before entitlement to benefits payable under title II of the Social Security Act [42 USCS §§ 401 et seq.] which benefits under the plan--

(i) do not exceed such social security benefits, and

(ii) terminate when such social security benefits commence.

(H) Continued accrual beyond normal retirement age.

(i) In general. Notwithstanding the preceding subparagraphs, a defined benefit plan shall be treated as not satisfying the requirements of this paragraph if, under the plan, an employee's benefit accrual is ceased, or the rate of an

employee's benefit accrual is reduced, because of the attainment of any age.

(ii) Certain limitations permitted. A plan shall not be treated as failing to meet the requirements of this subparagraph solely because the plan imposes (without regard to age) a limitation on the amount of benefits that the plan provides or a limitation on the number of years of service or years of participation which are taken into account for purposes of determining benefit accrual under the plan.

(iii) Adjustments under plan for delayed retirement taken into account. In the case of any employee who, as of the end of any plan year under a defined benefit plan, has attained normal retirement age under such plan--

(I) if distribution of benefits under such plan with respect to such employee has commenced as of the end of such plan year, then any requirement of this subparagraph for continued accrual of benefits under such plan with respect to such employee during such plan year shall be treated as satisfied to the extent of the actuarial equivalent of in-service distribution of benefits, and

(II) if distribution of benefits under such plan with respect to such employee has not commenced as of the end of such year in accordance with section 401(a)(14)(C) [26 USCS § 401(a)(14)(C)], and the payment of benefits under such plan with respect to such employee is not suspended during such plan year pursuant to subsection (a)(3)(B), then any requirement of this subparagraph for continued accrual of benefits under such plan with respect to such employee during such plan year shall be treated as satisfied to the extent of any adjustment in the benefit payable under the plan during such plan year attributable to the delay in the distribution of benefits after the attainment of normal retirement age.

The preceding provisions of this clause shall apply in accordance with regulations of the Secretary. Such regulations may provide for the application of the preceding provisions of this clause, in the case of any such employee,

with respect to any period of time within a plan year.

(iv) Disregard of subsidized portion of early retirement benefit. A plan shall not be treated as failing to meet the requirements of clause (i) solely because the subsidized portion of any early retirement benefit is disregarded in determining benefit accruals.

(v) Coordination with other requirements. The Secretary shall provide by regulation for the coordination of the requirements of this subparagraph with the requirements of subsection (a), sections 404, 410, and 415 [26 USCS §§ 404, 410, and 415], and the provisions of this subchapter [26 USCS §§ 401 et seq.] precluding discrimination in favor of highly compensated employees.

(2) Defined contribution plans.

(A) In general. A defined contribution plan satisfies the requirements of this paragraph if, under the plan, allocations to the employee's account are not ceased, and the rate at which amounts are allocated to the employee's account is not reduced, because of the attainment of any age.

(B) Application to target benefit plans. The Secretary shall provide by regulation for the application of the requirements of this paragraph to target benefit plans.

(C) Coordination with other requirements. The Secretary may provide by regulation for the coordination of the requirements of this paragraph with the requirements of subsection (a), sections 404, 410, and 415 [26 USCS §§ 404, 410, and 415], and the provisions of this subchapter [26 USCS §§ 401 et seq.] precluding discrimination in favor of highly compensated employees.

(3) Separate accounting required in certain cases. A plan satisfies the requirements of this paragraph if--

(A) in the case of a defined benefit plan, the plan requires separate accounting for the portion of each employee's accrued benefit derived from any voluntary employee contributions permitted under the plan; and

(B) in the case of any plan which is not a defined benefit plan, the plan requires separate accounting for each

employee's accrued benefit.

(4) Year of participation.

(A) Definition. For purposes of determining an employee's accrued benefit, the term "year of participation" means a period of service (beginning at the earliest date on which the employee is a participant in the plan and which is included in a period of service required to be taken into account under section 410(a)(5) [26 USCS § 410(a)(5)]. determined without regard to section 410(a)(5)(E) [26 USCS § 410(a)(5)(E)]) as determined under regulations prescribed by the Secretary of Labor which provide for the calculation of such period on any reasonable and consistent basis.

(B) Less than full time service. For purposes of this paragraph, except as provided in subparagraph (C), in the case of any employee whose customary employment is less than full time, the calculation of such employee's service on any basis which provides less than a ratable portion of the accrued benefit to which he would be entitled under the plan if his customary employment were full time shall not be treated as made on a reasonable and consistent basis.

(C) Less than 1,000 hours of service during year. For purposes of this paragraph, in the case of any employee whose service is less than 1,000 hours during any calendar year, plan year or other 12-consecutive month period designated by the plan (and not prohibited under regulations prescribed by the Secretary of Labor) the calculation of his period of service shall not be treated as not made on a reasonable and consistent basis solely because such service is not taken into account.

(D) Seasonal industries. In the case of any seasonal industry where the customary period of employment is less than 1,000 hours during a calendar year, the term "year of participation" shall be such period as determined under regulations prescribed by the Secretary of Labor.

(E) Maritime industries. For purposes of this subsection, in the case of any maritime industry, 125 days of service shall be treated as a year of participation. The Secretary of

Labor may prescribe regulations to carry out the purposes of this subparagraph.

(c) Allocation of accrued benefits between employer and employee contributions.

(1) Accrued benefit derived from employer contributions. For purposes of this section, an employee's accrued benefit derived from employer contributions as of any applicable date is the excess, if any, of the accrued benefit for such employee as of such applicable date over the accrued benefit derived from contributions made by such employee as of such date.

(2) Accrued benefit derived from employee contributions.

(A) Plans other than defined benefit plans. In the case of a plan other than a defined benefit plan, the accrued benefit derived from contributions made by an employee as of any applicable date is--

(i) except as provided in clause (ii), the balance of the employee's separate account consisting only of his contributions and the income, expenses, gains, and losses attributable thereto, or

(ii) if a separate account is not maintained with respect to an employee's contributions under such a plan, the amount which bears the same ratio to his total accrued benefit as the total amount of the employee's contributions (less withdrawals) bears to the sum of such contributions and the contributions made on his behalf by the employer (less withdrawals).

(B) Defined benefit plans. In the case of a defined benefit plan, the accrued benefit derived from contributions made by an employee as of any applicable date is the amount equal to the employee's accumulated contributions expressed as an annual benefit commencing at normal retirement age, using an interest rate which would be used under the plan under section 417(e)(3) [26 USCS § 417(e)(3)] (as of the determination date).

(C) Definition of accumulated contributions. For

purposes of this subsection, the term "accumulated contributions" means the total of--

(i) all mandatory contributions made by the employee,

(ii) interest (if any) under the plan to the end of the last plan year to which subsection (a)(2) does not apply (by reason of the applicable effective date), and

(iii) interest on the sum of the amounts determined under clauses (i) and (ii) compounded annually--

(I) at the rate of 120 percent of the Federal mid-term rate (as in effect under section 1274 [26 USCS § 1274] for the 1st month of a plan year) for the period beginning with the 1st plan year to which subsection (a)(2) applies (by reason of the applicable effective date) and ending with the date on which the determination is being made, and

(II) at the interest rate which would be used under the plan under section 417(e)(3) [26 USCS § 417(e)(3)] (as of the determination date) for the period beginning with the determination date and ending on the date on which the employee attains normal retirement age.

For purposes of this subparagraph, the term "mandatory contributions" means amounts contributed to the plan by the employee which are required as a condition of employment, as a condition of participation in such plan, or as a condition of obtaining benefits under the plan attributable to employer contributions.

(D) Adjustments. The Secretary is authorized to adjust by regulation the conversion factor described in subparagraph (B) from time to time as he may deem necessary. No such adjustment shall be effective for a plan year beginning before the expiration of 1 year after such adjustment is determined and published.

(3) Actuarial adjustment. For purposes of this section, in the case of any defined benefit plan, if an employee's accrued benefit is to be determined as an amount other than an annual benefit commencing at normal retirement age, or if the accrued benefit derived from contributions made by an employee is to be determined with respect to a benefit other

than an annual benefit in the form of a single life annuity (without ancillary benefits) commencing at normal retirement age, the employee's accrued benefit, or the accrued benefits derived from contributions made by an employee, as the case may be, shall be the actuarial equivalent of such benefit or amount determined under paragraph (1) or (2).

(d) Special rules.

(1) Coordination with section 401(a)(4). A plan which satisfies the requirements of this section shall be treated as satisfying any vesting requirements resulting from the application of section 401(a)(4) [26 USCS § 401(a)(4)] unless--

(A) there has been a pattern of abuse under the plan (such as a dismissal of employees before their accrued benefits become nonforfeitable) tending to discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q) [26 USCS § 414(q)]), or

(B) there have been, or there is reason to believe there will be, an accrual of benefits or forfeitures tending to discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q) [26 USCS § 414(q)]).

(2) Prohibited discrimination. Subsection (a) shall not apply to benefits which may not be provided for designated employees in the event of early termination of the plan under provisions of the plan adopted pursuant to regulations prescribed by the Secretary to preclude the discrimination prohibited by section 401(a)(4) [26 USCS § 401(a)(4)].

(3) Termination or partial termination; discontinuance of contributions. Notwithstanding the provisions of subsection (a), a trust shall not constitute a qualified trust under section 401(a) [26 USCS § 401(a)] unless the plan of which such trust is a part provides that--

(A) upon its termination or partial termination, or

(B) in the case of a plan to which section 412 [26 USCS § 412] does not apply, upon complete discontinuance of

contributions under the plan,

the rights of all affected employees to benefits accrued to the date of such termination, partial termination, or discontinuance, to the extent funded as of such date, or the amounts credited to the employees' accounts, are nonforfeitable. This paragraph shall not apply to benefits or contributions which, under provisions of the plan adopted pursuant to regulations prescribed by the Secretary to preclude the discrimination prohibited by section 401(a)(4) [26 USCS § 401(a)(4)], may not be used for designated employees in the event of early termination of the plan. For purposes of this paragraph, in the case of the complete discontinuance of contributions under a profit-sharing or stock bonus plan, such plan shall be treated as having terminated on the day on which the plan administrator notifies the Secretary (in accordance with regulations) of the discontinuance.

(4) Repealed.

(5) Treatment of voluntary employee contributions. In the case of a defined benefit plan which permits voluntary employee contributions, the portion of an employee's accrued benefit derived from such contributions shall be treated as an accrued benefit derived from employee contributions under a plan other than a defined benefit plan.

(6) Accrued benefit not to be decreased by amendment.

(A) In general. A plan shall be treated as not satisfying the requirements of this section if the accrued benefit of a participant is decreased by an amendment of the plan, other than an amendment described in section 412(c)(8) [26 USCS § 412(c)(8)], or section 4281 of the Employee Retirement Income Security Act of 1974 [29 USCS § 1441].

(B) Treatment of certain plan amendments. For purposes of subparagraph (A), a plan amendment which has the effect of--(i) eliminating or reducing an early retirement benefit or a retirement-type subsidy (as defined in regulations), or (ii) eliminating an optional form of benefit, with respect to benefits attributable to service before the amendment shall be

treated as reducing accrued benefits. In the case of a retirement-type subsidy, the preceding sentence shall apply only with respect to a participant who satisfies (either before or after the amendment) the preamendment conditions for the subsidy. The Secretary shall by regulations provide that this subparagraph shall not apply to any plan amendment which reduces or eliminates benefits or subsidies which create significant burdens or complexities for the plan and plan participants, unless such amendment adversely affects the rights of any participant in a more than de minimis manner. The Secretary may by regulations provide that this subparagraph shall not apply to a plan amendment described in clause (ii) (other than a plan amendment having an effect described in clause (i)).

(C) Special rule for ESOPs. For purposes of this paragraph, any--(i) tax credit employee stock ownership plan (as defined in section 409(a) [26 USCS § 409(a)]), or (ii) employee stock ownership plan (as defined in section 4975(e)(7) [26 USCS § 4975(e)(7)]), shall not be treated as failing to meet the requirements of this paragraph merely because it modifies distribution options in a non-discriminatory manner.

(D) Plan transfers.

(i) In general. A defined contribution plan (in this subparagraph referred to as the "transferee plan") shall not be treated as failing to meet the requirements of this subsection merely because the transferee plan does not provide some or all of the forms of distribution previously available under another defined contribution plan (in this subparagraph referred to as the "transferor plan") to the extent that--

(I) the forms of distribution previously available under the transferor plan applied to the account of a participant or beneficiary under the transferor plan that was transferred from the transferor plan to the transferee plan pursuant to a direct transfer rather than pursuant to a distribution from the transferor plan,

(II) the terms of both the transferor plan and the

transferee plan authorize the transfer described in subclause (I),

(III) the transfer described in subclause (I) was made pursuant to a voluntary election by the participant or beneficiary whose account was transferred to the transferee plan,

(IV) the election described in subclause (III) was made after the participant or beneficiary received a notice describing the consequences of making the election, and

(V) the transferee plan allows the participant or beneficiary described in subclause (III) to receive any distribution to which the participant or beneficiary is entitled under the transferee plan in the form of a single sum distribution.

(ii) Special rule for mergers, etc. Clause (i) shall apply to plan mergers and other transactions having the effect of a direct transfer, including consolidations of benefits attributable to different employers within a multiple employer plan.

(E) Elimination of form of distribution. Except to the extent provided in regulations, a defined contribution plan shall not be treated as failing to meet the requirements of this section merely because of the elimination of a form of distribution previously available thereunder. This subparagraph shall not apply to the elimination of a form of distribution with respect to any participant unless--

(i) a single sum payment is available to such participant at the same time or times as the form of distribution being eliminated, and (ii) such single sum payment is based on the same or greater portion of the participant's account as the form of distribution being eliminated.

(e) Application of vesting standards to certain plans.

(1) The provisions of this section (other than paragraph (2)) shall not apply to--

(A) a governmental plan (within the meaning of section 414(d) [26 USCS § 414(d)]),

(B) a church plan (within the meaning of section 414(e) [26 USCS § 414(e)]) with respect to which the election provided by section 410(d) [26 USCS § 410(d)] has not been made,

(C) a plan which has not, at any time after September 2, 1974, provided for employer contributions, and

(D) a plan established and maintained by a society, order, or association described in section 501(c)(8) or (9) [26 USCS § 501(c)(8) or (9)], if no part of the contributions to or under such plan are made by employers of participants in such plan.

(2) A plan described in paragraph (1) shall be treated as meeting the requirements of this section, for purposes of section 401(a) [26 USCS § 401(a)], if such plan meets the vesting requirements resulting from the application of sections 401(a)(4) and 401(a)(7) [26 USCS §§ 401(a)(4) and 401(a)(7)] as in effect on September 1, 1974.

Pennsylvania Divorce Code, 23 Pa. Cons. Stat. Ann. § 3101 et seq. (2004).

23 Pa. Cons. Stat. Ann. § 3102. Legislative findings and intent

(a) Policy.--The family is the basic unit in society and the protection and preservation of the family is of paramount public concern. Therefore, it is the policy of the Commonwealth to:

(1) Make the law for legal dissolution of marriage effective for dealing with the realities of matrimonial experience.

(2) Encourage and effect reconciliation and settlement of differences between spouses, especially where children are involved.

(3) Give primary consideration to the welfare of the family rather than the vindication of private rights or the punishment of matrimonial wrongs.

(4) Mitigate the harm to the spouses and their children caused by the legal dissolution of the marriage.

(5) Seek causes rather than symptoms of family disintegration and cooperate with and utilize the resources available to deal with family problems.

(6) Effectuate economic justice between parties who are divorced or separated and grant or withhold alimony according to the actual need and ability to pay of the parties and insure a fair and just determination and settlement of their property rights.

(b) Construction of part.--The objectives set forth in subsection (a) shall be considered in construing provisions of this part and shall be regarded as expressing the legislative intent.

§ 3323. Decree of court

(a) General rule.--In all matrimonial causes, the court may either dismiss the complaint or enter a decree of divorce or annulment of the marriage.

(b) Contents of decree.--A decree granting a divorce or an annulment shall include, after a full hearing, where these matters are raised in any pleadings, an order determining and disposing of existing property rights and interests between the parties, custody, partial custody and visitation rights, child support, alimony, reasonable attorney fees, costs and expenses and any other related matters, including the enforcement of agreements voluntarily entered into between the parties. In the enforcement of the rights of any party to any of these matters, the court shall have all necessary powers, including, but not limited to, the power of contempt and the power to attach wages.

(c.1) Bifurcation.--With the consent of both parties, the court may enter a decree of divorce or annulment prior to the final determination and disposition of the matters provided for in subsection (b). In the absence of the consent of both parties, the court may enter a decree of divorce or annulment prior to the final determination and disposition of the matters provided for in subsection (b) if:

(1) grounds have been established as provided in subsection (g); and

(2) the moving party has demonstrated that:

(i) compelling circumstances exist for the entry of the decree of divorce or annulment; and

(ii) sufficient economic protections have been provided for the other party during the pendency of the disposition of the matters provided for in subsection (b).

(e) Costs.--The court may award costs to the party in whose favor the order or decree shall be entered or may order that each party shall pay their own costs or may order that costs be divided equitably as it shall appear just and reasonable.

(f) Equity power and jurisdiction of the court.--In all

matrimonial causes, the court shall have full equity power and jurisdiction and may issue injunctions or other orders which are necessary to protect the interests of the parties or to effectuate the purposes of this part and may grant such other relief or remedy as equity and justice require against either party or against any third person over whom the court has jurisdiction and who is involved in or concerned with the disposition of the cause.

(g) Grounds established.--For purposes of subsections (c.1) and (d.1), grounds are established as follows:

(1) In the case of an action for divorce under section 3301(a) or (b) (relating to grounds for divorce), the court adopts a report of the master or makes its own findings that grounds for divorce exist.

(2) In the case of an action for divorce under section 3301(c), both parties have filed affidavits of consent.

(3) In the case of an action for divorce under section 3301(d), an affidavit has been filed and no counter-affidavit has been filed or, if a counter-affidavit has been filed denying the affidavit's averments, the court determines that the marriage is irretrievably broken and the parties have lived separate and apart for at least two years at the time of the filing of the affidavit.

§ 3332. Opening or vacating decrees

A motion to open a decree of divorce or annulment may be made only within the period limited by 42 Pa.C.S. § 5505 (relating to modification of orders) and not thereafter. The motion may lie where it is alleged that the decree was procured by intrinsic fraud or that there is new evidence relating to the cause of action which will sustain the attack upon its validity. A motion to vacate a decree or strike a judgment alleged to be void because of extrinsic fraud, lack of jurisdiction over the subject matter or a fatal defect apparent upon the face of the record must be made within five years after entry of the final decree. Intrinsic fraud

relates to a matter adjudicated by the judgment, including perjury and false testimony, whereas extrinsic fraud relates to matters collateral to the judgment which have the consequence of precluding a fair hearing or presentation of one side of the case.

§ 3333. Res judicata and estoppel

The validity of a divorce or annulment decree granted by a court having jurisdiction over the subject matter may not be questioned by a party who was subject to the personal jurisdiction of the court except by direct appeal provided or prescribed by law. A party who sought and obtained a decree, financed or agreed to its procurement, or accepted a property settlement, alimony pendente lite or alimony pursuant to the terms of the decree, or who remarries after the decree, or is guilty of laches, is barred from making a collateral attack upon the validity of the decree unless, by clear and convincing evidence, it is established that fraud by the other party prevented the making of a timely appeal from the divorce or annulment decree.

§ 3501. Definitions

(a) General rule.—As used in this chapter, "marital property" means all property acquired by either party during the marriage and the increase in value of any nonmarital property acquired pursuant to paragraphs (1) and (3) as measured and determined under subsection (a.1). However, marital property does not include:

(1) Property acquired prior to marriage or property acquired in exchange for property acquired prior to the marriage.

(2) Property excluded by valid agreement of the parties entered into before, during or after the marriage.

(3) Property acquired by gift, except between spouses, bequest, devise or descent or property acquired in

exchange for such property.

(4) Property acquired after final separation until the date of divorce, except for property acquired in exchange for marital assets.

(5) Property which a party has sold, granted, conveyed or otherwise disposed of in good faith and for value prior to the date of final separation.

(6) Veterans' benefits exempt from attachment, levy or seizure pursuant to the act of September 2, 1958 (Public Law 85-857, 72 Stat. 1229) [FN1], as amended, except for those benefits received by a veteran where the veteran has waived a portion of his military retirement pay in order to receive veterans' compensation.

(7) Property to the extent to which the property has been mortgaged or otherwise encumbered in good faith for value prior to the date of final separation.

(8) Any payment received as a result of an award or settlement for any cause of action or claim which accrued prior to the marriage or after the date of final separation regardless of when the payment was received.

(a.1) Measuring and determining the increase in value of nonmarital property.– The increase in value of any nonmarital property acquired pursuant to subsection (a)(1) and (3) shall be measured from the date of marriage or later acquisition date to either the date of final separation or the date as close to the hearing on equitable distribution as possible, whichever date results in a lesser increase. Any decrease in value of the nonmarital property of a party shall be offset against any increase in value of the nonmarital property of that party. However, a decrease in value of the nonmarital property of a party shall not be offset against any increase in value of the nonmarital property of the other party or against any other marital property subject to equitable division.

(b) Presumption.–All real or personal property acquired by either party during the marriage is presumed to be marital property regardless of whether title is held individually or by

the parties in some form of co-ownership such as joint tenancy, tenancy in common or tenancy by the entirety. The presumption of marital property is overcome by a showing that the property was acquired by a method listed in subsection (a).

(c) Defined benefit retirement plans.--Notwithstanding subsections (a), (a.1) and (b):

(1) In the case of the marital portion of a defined benefit retirement plan being distributed by means of a deferred distribution, the defined benefit plan shall be allocated between its marital and nonmarital portions solely by use of a coverture fraction. The denominator of the coverture fraction shall be the number of months the employee spouse worked to earn the total benefit and the numerator shall be the number of such months during which the parties were married and not finally separated. The benefit to which the coverture fraction is applied shall include all postseparation enhancements except for enhancements arising from postseparation monetary contributions made by the employee spouse, including the gain or loss on such contributions.

(2) In the case of the marital portion of a defined benefit retirement plan being distributed by means of an immediate offset, the defined benefit plan shall be allocated between its marital and nonmarital portions solely by use of a coverture fraction. The denominator of the coverture fraction shall be the number of months the employee spouse worked to earn the accrued benefit as of a date as close to the time of trial as reasonably possible and the numerator shall be the number of such months during which the parties were married and not finally separated. The benefit to which the coverture fraction is applied shall include all postseparation enhancements up to a date as close to the time of trial as reasonably possible except for enhancements arising from postseparation monetary contributions made by the employee spouse, including the gain or loss on such contributions.

§ 3502. Equitable division of marital property

(a) General rule.—Upon the request of either party in an action for divorce or annulment, the court shall equitably divide, distribute or assign, in kind or otherwise, the marital property between the parties without regard to marital misconduct in such percentages and in such manner as the court deems just after considering all relevant factors. The court may consider each marital asset or group of assets independently and apply a different percentage to each marital asset or group of assets. Factors which are relevant to the equitable division of marital property include the following:

(1) The length of the marriage.

(2) Any prior marriage of either party.

(3) The age, health, station, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties.

(4) The contribution by one party to the education, training or increased earning power of the other party.

(5) The opportunity of each party for future acquisitions of capital assets and income.

(6) The sources of income of both parties, including, but not limited to, medical, retirement, insurance or other benefits.

(7) The contribution or dissipation of each party in the acquisition, preservation, depreciation or appreciation of the marital property, including the contribution of a party as homemaker.

(8) The value of the property set apart to each party.

(9) The standard of living of the parties established during the marriage.

(10) The economic circumstances of each party at the time the division of property is to become effective.

(10.1) The Federal, State and local tax ramifications associated with each asset to be divided, distributed or assigned, which ramifications need not be immediate and

certain.

(10.2) The expense of sale, transfer or liquidation associated with a particular asset, which expense need not be immediate and certain.

(11) Whether the party will be serving as the custodian of any dependent minor children.

(b) Lien.--The court may impose a lien or charge upon property of a party as security for the payment of alimony or any other award for the other party.

(c) Family home.--The court may award, during the pendency of the action or otherwise, to one or both of the parties the right to reside in the marital residence.

(d) Life insurance.--The court may direct the continued maintenance and beneficiary designations of existing policies insuring the life or health of either party which were originally purchased during the marriage and owned by or within the effective control of either party. Where it is necessary to protect the interests of a party, the court may also direct the purchase of, and beneficiary designations on, a policy insuring the life or health of either party.

(e) Powers of the court.--If, at any time, a party has failed to comply with an order of equitable distribution, as provided for in this chapter or with the terms of an agreement as entered into between the parties, after hearing, the court may, in addition to any other remedy available under this part, in order to effect compliance with its order:

(1) enter judgment;

(2) authorize the taking and seizure of the goods and chattels and collection of the rents and profits of the real and personal, tangible and intangible property of the party;

(3) award interest on unpaid installments;

(4) order and direct the transfer or sale of any property required in order to comply with the court's order;

(5) require security to insure future payments in compliance with the court's order;

(6) issue attachment proceedings, directed to the sheriff or

other proper officer of the county, directing that the person named as having failed to comply with the court order be brought before the court, at such time as the court may direct. If the court finds, after hearing, that the person willfully failed to comply with the court order, it may deem the person in civil contempt of court and, in its discretion, make an appropriate order, including, but not limited to, commitment of the person to the county jail for a period not to exceed six months;

(7) award counsel fees and costs;

(8) attach wages; or

(9) find the party in contempt.

(f) Partial distribution.--The court, upon the request of either party, may at any stage of the proceedings enter an order providing for an interim partial distribution or assignment of marital property.

23 Pa.C.S. § 3505 (2005)

Disposition of property to defeat obligations

(a) PRELIMINARY RELIEF.-- Where it appears to the court that a party is about to leave the jurisdiction of the court or is about to remove property of that party from the jurisdiction of the court or is about to dispose of, alienate or encumber property in order to defeat equitable distribution, alimony pendente lite, alimony, child and spousal support or a similar award, an injunction may issue to prevent the removal or disposition and the property may be attached as prescribed by general rules. The court may also issue a writ of ne exeat to preclude the removal.

(b) INVENTORY OF PROPERTY.-- Both parties shall submit to the court an inventory and appraisement, which shall contain all of the following:

(1) A list of the property owned or possessed by either or both of them as of: (i) the date of separation; and (ii) thirty days prior to the date of hearing on equitable distribution.

(2) A list of the value of the property owned or possessed

by either or both of them as of(i) the date of acquisition; (ii) the date of separation; and (iii) thirty days prior to the date of hearing on equitable distribution.

(3) A list of the liabilities of either or both of them as of 30 days prior to the date of hearing on equitable distribution, whether or not the liabilities are related to the property set forth in the inventory and appraisement.

(c) DISCOVERY.-- Discovery under this part shall be as provided for all other civil actions under the Pennsylvania Rules of Civil Procedure.

(d) CONSTRUCTIVE TRUST FOR UNDISCLOSED ASSETS.-- If a party fails to disclose information required by general rule of the Supreme Court and in consequence thereof an asset or assets with a fair market value of $ 1,000 or more is omitted from the final distribution of property, the party aggrieved by the nondisclosure may at any time petition the court granting the award to declare the creation of a constructive trust as to all undisclosed assets for the benefit of the parties and their minor or dependent children, if any. The party in whose name the assets are held shall be declared the constructive trustee unless the court designates a different trustee, and the trust may include any terms and conditions the court may determine. The court shall grant the petition upon a finding of a failure to disclose the assets as required by general rule of the Supreme Court.

(e) ENCUMBRANCE OR DISPOSITION TO THIRD PARTIES.-- An encumbrance or disposition of marital property to third persons who paid wholly inadequate consideration for the property may be deemed fraudulent and declared void.

42 Pa.C.S. § 6108 (2005)

§ 6108. Business records

(a) SHORT TITLE OF SECTION.-- This section shall be known and may be cited as the "Uniform Business Records as Evidence Act."

(b) GENERAL RULE.-- A record of an act, condition or event shall, insofar as relevant, be competent evidence if the custodian or other qualified witness testifies to its identity and the mode of its preparation, and if it was made in the regular course of business at or near the time of the act, condition or event, and if, in the opinion of the tribunal, the sources of information, method and time of preparation were such as to justify its admission.

(c) DEFINITION.-- As used in this section "BUSINESS" includes every kind of business, profession, occupation, calling, or operation of institutions whether carried on for profit or not.

23 Pa.C.S. § 4321 (2005)

§ 4321. Liability for support

Subject to the provisions of this chapter:

(1) Married persons are liable for the support of each other according to their respective abilities to provide support as provided by law.

(2) Parents are liable for the support of their children who are unemancipated and 18 years of age or younger.

(3) Parents may be liable for the support of their children who are 18 years of age or older.

23 Pa.C.S. § 4322 (2005)

§ 4322. Support guideline

(a) STATEWIDE GUIDELINE.-- Child and spousal support shall be awarded pursuant to a Statewide guideline as established by general rule by the Supreme Court, so that persons similarly situated shall be treated similarly. The guideline shall be based upon the reasonable needs of the child or spouse seeking support and the ability of the obligor to provide support. In determining the reasonable needs of the child or spouse seeking support and the ability of the obligor to provide support, the guideline shall place primary emphasis on the net incomes and earning capacities of the parties, with allowable deviations for unusual needs, extraordinary expenses and other factors, such as the parties' assets, as warrant special attention. The guideline so developed shall be reviewed at least once every four years.

(b) REBUTTABLE PRESUMPTION.-- There shall be a rebuttable presumption, in any judicial or expedited process, that the amount of the award which would result from the application of such guideline is the correct amount of support to be awarded. A written finding or specific finding on the record that the application of the guideline would be unjust or inappropriate in a particular case shall be sufficient to rebut the presumption in that case, provided that the finding is based upon criteria established by the Supreme Court by general rule within one year of the effective date of this act.

23 Pa.C.S. § 4324 (2005)

§ 4324. Inclusion of spousal medical support

In addition to periodic support payments, the court may require that an obligor pay a designated percentage of a spouse's reasonable and necessary health care expenses. If health care coverage is available through an obligor or obligee at no cost as a benefit of employment or at a reasonable cost, the court shall order an obligor or obligee to provide or extend health care coverage to a spouse. Upon failure of the obligor to make this payment or reimburse the spouse and after compliance with procedural due process requirement, the court shall treat the amount as arrearages.

23 Pa.C.S. § 4326 (2005)

§ 4326. Mandatory inclusion of child medical support

(a) GENERAL RULE.-- In every proceeding to establish or modify an order which requires the payment of child support, the court shall ascertain the ability of each parent to provide health care coverage for the children of the parties and the order shall provide health care coverage for each child as appropriate.

(b) NONCUSTODIAL PARENT REQUIREMENT.-- If health care coverage is available at a reasonable cost to a noncustodial parent on an employment-related or other group basis, the court shall require that the noncustodial parent provide such coverage to the children of the parties. In cases where there are two noncustodial parents having such coverage available, the court shall require one or both parents to provide coverage.

(c) CUSTODIAL PARENT REQUIREMENT.-- If health care coverage is available at a reasonable cost to a custodial

parent on an employment-related or other group basis, the court shall require that the custodial parent provide such coverage to the children of the parties, unless adequate health care coverage has already been provided through the noncustodial parent. In cases where the parents have shared custody of the child and coverage is available to both, the court shall require one or both parents to provide coverage, taking into account the financial ability of the parties and the extent of coverage available to each parent.

(d) ADDITIONAL REQUIREMENT.-- If the court finds that health care coverage is not available to either parent at a reasonable cost on an employment-related or other group basis, the court shall order either parent or both parents to obtain for the parties' children health insurance coverage which is available at reasonable cost.

(D.1) MEDICAL SUPPORT NOTICE.-- The department shall develop a medical support notice for use by the department or domestic relations section in accordance with procedures established by the department. The medical support notice shall comply with national standards established by the Federal Government for medical support notices. The department or domestic relations section shall send the medical support notice to the employer within two business days after the date of entry of an employee who is a new hire into the Commonwealth directory of new hires under section 4392 (relating to employer reporting).

(e) UNINSURED EXPENSES.-- The court shall determine the amount of any deductible and copayments which each parent shall pay. In addition, the court may require that either parent or both parents pay a designated percentage of the reasonable and necessary uncovered health care expenses of the parties' children, including birth-related expenses incurred prior to the filing of the complaint. Upon request of the domestic relations section, the department shall provide

to the domestic relations section all birth-related expenses which the department has incurred in cases it has referred to the domestic relations section for child support services.

(f) PROOF OF INSURANCE.-- Within 30 days after the entry of an order requiring a parent to provide health care coverage for a child or after any change in health care coverage due to a change in the parent's employment, the obligated parent shall submit to the other parent, or person having custody of the child, written proof that health care coverage has been obtained or that application for coverage has been made. Proof of coverage shall consist of at a minimum:

(1) The name of the health care coverage provider.

(2) Any applicable identification numbers.

(3) Any cards evidencing coverage.

(4) The address to which claims should be made.

(5) A description of any restrictions on usage, such as prior approval for hospital admissions, and the manner of obtaining approval.

(6) A copy of the benefit booklet or coverage contract.

(7) A description of all deductibles and copayments.

(8) Five copies of any claim forms.

(g) OBLIGATIONS OF INSURANCE COMPANIES.-- Every insurer doing business within this Commonwealth shall be obligated as follows:

(1) to permit the custodial parent or the provider, with the

custodial parent's approval, to submit claims for covered services without the approval of the noncustodial parent and to make payment on such claims directly to such custodial parent, the provider or, in the case of Medical Assistance patients, to the department;

(2) to provide such information to the custodial parent as may be necessary to obtain benefits, including copies of benefit booklets, insurance contracts and claims information;

(3) if coverage is made available for dependents of the insured, to make such coverage available to the insured's children without regard to enrollment season restrictions, whether the child was born out of wedlock, whether the child is claimed as a dependent on the parent's Federal income tax return, whether the child resides in the insurer's service area, the amount of support contributed by a parent, the amount of time the child spends in the home or the custodial arrangements for the child;

(4) to permit the enrollment of children under court order upon application of the custodial parent, domestic relations section or the department within 30 days of receipt by the insurer of the order;

(4.1) not to disenroll or eliminate coverage of any child unless the insurer is provided satisfactory written evidence that a court order requiring coverage is no longer in effect or that the child is or will be enrolled in comparable health coverage through another insurer which will take effect no later than the effective date of such disenrollment;

(4.2) to receive, process and pay claims (whether or not on behalf of a child), including electronically submitted claims, submitted by the department within the time permitted by law without imposing any patient signature requirement or other requirement different from those imposed upon providers,

agents or assignees of any insured individual;

(5) to provide the custodial parent who has complied with subsection (j) with the same notification of termination or modification of any health care coverage due to nonpayment of premiums or other reason as is provided to other insureds under the policy; and

(6) except as provided in paragraph (4.2), to not take into account the fact that any individual, whether or not a child, is eligible for or is being provided medical assistance when enrolling that individual or when making any payments for benefits to the individual or on the individual's behalf.

(h) OBLIGATIONS OF NONINSURERS.-- To the maximum extent permitted by Federal law, the obligations of subsection (g) shall apply to noninsurers providing health care coverage within this Commonwealth, including health maintenance organizations, self-insured employee health benefit plans and any other entity offering a service benefit plan.

(H.1) OBLIGATIONS OF EMPLOYERS.-- Every employer doing business within this Commonwealth shall be obligated as follows:

(1) in any case in which a parent is required by a court order to provide health coverage for a child and the parent is eligible for family health coverage, the employer shall permit the insured parent to enroll any child who is otherwise eligible without regard to any enrollment season restrictions;

(2) if the insured parent is enrolled but fails to make application to obtain coverage for such child, to enroll the child under the family coverage upon application by the child's other parent, the domestic relations section or the department;

(3) not to disenroll or eliminate coverage of any such child unless the employer is provided satisfactory written evidence that the court or administrative order is no longer in effect, the child is or will be enrolled in comparable health coverage which will take effect not later than the effective date of such disenrollment or the employer has eliminated family health coverage for all of its employees;

(4) to transfer health coverage for any child to the health coverage of the employer upon receipt of a medical support notice under subsection (d.1) issued by the department or a domestic relations section within 20 business days after the date of the notice; and

(5) to notify the domestic relations section whenever the insured parent's employment is terminated.

(i) OBLIGATIONS OF CUSTODIAL PARENT.-- The custodial parent shall comply with the insurer's existing claim procedures and present to the insurer one of the following documents:

(1) a copy of a court order as defined in subsection (l); or

(2) a release signed by the insured permitting the insurer to communicate directly with the custodial parent.

(j) ENFORCEMENT OF ORDER.-- The employee's share, if any, of premiums for health coverage shall be deducted by the employer and paid to the insurer or other entity providing health care coverage. If an obligated parent fails to comply with the order to provide health care coverage for a child, fails to pay medical expenses for a child or receives payment from a third party for the cost of medical services provided to such child and fails to reimburse the custodial parent or provider of services, the court shall:

(1) If, after a hearing, the failure or refusal is determined to

have been willful, impose the penalties of section 4345(a) (relating to contempt for noncompliance with support order).

(2) Enter an order for a sum certain against the obligated parent for the cost of medical care for the child and for any premiums paid or provided for the child during any period in which the obligated parent failed or refused to provide coverage. Failure to comply with an order under this paragraph shall be subject to section 4348 (relating to attachment of income).

(3) Upon failure of the obligated parent to make this payment or reimburse the custodial parent and after compliance with due process requirements, treat the amount as arrearages.

(k) ENFORCEMENT AGAINST INSURERS.-- Any insurer or other entity which violates the obligations imposed upon it under subsection (g) or (h) shall be civilly liable for damages and may be adjudicated in contempt and fined by the court.

(l) DEFINITIONS.-- As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"BIRTH-RELATED EXPENSES." Costs of reasonable and necessary health care for the mother or child or both incurred before, during or after the birth of a child born in or out of wedlock which are the result of the pregnancy or birth and which benefit either the mother or child. Charges not related to the pregnancy or birth shall be excluded.

"CHILD." A child to whom a duty of child support is owed.

"HEALTH CARE COVERAGE." Coverage for medical,

dental, orthodontic, optical, psychological, psychiatric or other health care services for a child. For the purposes of this section, medical assistance under Subarticle (f) of Article IV of the act of June 13, 1967 (P.L. 31, No. 21), known as the Public Welfare Code, shall not be considered health care coverage.

"INSURER." A foreign or domestic insurance company, association or exchange holding a certificate of authority under the act of May 17, 1921 (P.L. 682, No. 284), known as The Insurance Company Law of 1921; a risk-assuming preferred provider organization operating under section 630 of The Insurance Company Law of 1921; a health maintenance organization holding a certificate of authority under the act of December 29, 1972 (P.L. 1701, No. 364), known as the Health Maintenance Organization Act; a fraternal benefit society holding a certificate of authority under the act of December 14, 1992 (P.L. 835, No. 134), known as the Fraternal Benefit Societies Code; a hospital plan corporation holding a certificate of authority under 40 Pa.C.S. Ch. 61 (relating to hospital plan corporations); a professional health service plan corporation holding a certificate of authority under 40 Pa.C.S. Ch. 63 (relating to professional health services plan corporations); or a similar entity authorized to do insurance business in this Commonwealth.

"MEDICAL CHILD SUPPORT ORDER." An order which relates to the child's right to receive certain health care coverage and which:

(1) includes the name and last known mailing address of the parent providing health care coverage and the name and last known mailing address of the child;

(2) includes a reasonable description of the type of coverage to be provided or includes the manner in which

coverage is to be determined;

(3) designates the time period to which the order applies;

(4) if coverage is provided through a group health plan, designates each plan to which the order applies as of the date the order is written;

(4.1) requires that, if health care coverage is provided through the noncustodial parent's employer and that parent changes employment, the provisions of the order will remain in effect for the duration of the order and will automatically apply to the new employer. The new employer shall enroll the child in health care coverage without need for an amended order unless the noncustodial parent contests the enrollment; and

(5) includes the name and address of the custodial parent.

Pennsylvania Rules of Evidence

Pa.R.E. 103 (2005)

Rule 103. Rulings on evidence

(a) Effect of Erroneous Ruling. Error may not be predicated upon a ruling that admits or excludes evidence unless

(1) Objection. In case the ruling is one admitting evidence, a timely objection, motion to strike or motion in limine appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or

(2) Offer of Proof. In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or by motion in limine or was apparent

from the context within which the evidence was offered.

Once the court makes a definitive ruling on the record admitting or excluding evidence, either at or before trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal.

(b) Record of Offer and Ruling. The court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. It may direct the making of an offer in question and answer form.

(c) Hearing of Jury. In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury.

Pa.R.E. 201 (2005)

Rule 201. Judicial notice of adjudicative facts

(a) Scope of rule. This rule governs only judicial notice of adjudicative facts.

(b) Kinds of facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(c) When discretionary. A court may take judicial notice, whether requested or not.

(d) When mandatory. A court shall take judicial notice if requested by a party and supplied with the necessary

information.

(e) Opportunity to be heard. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(f) Time of taking notice. Judicial notice may be taken at any stage of the proceeding.

(g) Instructing jury. The court shall instruct the jury that it may, but is not required to, accept as conclusive, any fact judicially noticed.

Pa.R.E. 401 (2005)

Rule 401. Definition of "relevant evidence"

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Pa.R.E. 402 (2005)

Rule 402. Relevant evidence generally admissible; irrelevant evidence inadmissible

All relevant evidence is admissible, except as otherwise provided by law. Evidence that is not relevant is not admissible.

Pa.R.E. 403 (2005)

Rule 403. Exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time

Although relevant, evidence may be excluded if its probative value is outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Pa.R.E. 404 (2005)

Rule 404. Character evidence not admissible to prove conduct; exceptions; other crimes

(a) Character evidence generally. Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except as follows:

(1) *Character of accused.* In a criminal case, evidence of a pertinent trait of character of the accused is admissible when offered by the accused, or by the prosecution to rebut the same.

(2) *Character of complainant.*

(i) In a criminal case, evidence of a pertinent trait of character of the complainant is admissible when offered by the accused, or by the prosecution to rebut the same.

(ii) In a homicide case, where the accused has offered evidence that the deceased was the first aggressor, evidence of a character trait of the deceased for peacefulness is admissible when offered by the prosecution to rebut the same.

(iii) In a civil action for assault and battery, evidence of a character trait of violence of the plaintiff may be admitted when offered by the defendant to rebut evidence that the

defendant was the first aggressor.

(3) *Character of witness.* Evidence of a pertinent trait of character of a witness is admissible as provided in Rules 607 (Impeachment of Witness), 608 (Character and Conduct of Witness) and 609 (Evidence of Conviction of Crime).

(b) Other crimes, wrongs, or acts.

(1) Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith.

(2) Evidence of other crimes, wrongs, or acts may be admitted for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident.

(3) Evidence of other crimes, wrongs, or acts proffered under subsection (b)(2) of this rule may be admitted in a criminal case only upon a showing that the probative value of the evidence outweighs its potential for prejudice.

(4) In criminal cases, the prosecution shall provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of any such evidence it intends to introduce at trial.

Pa.R.E. 405 (2005)

Rule 405. Methods of proving character

(a) Reputation evidence. In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation. On cross-examination of the reputation witness, inquiry is allowable into specific instances of conduct probative of the character

trait in question, except that in criminal cases inquiry into allegations of other criminal misconduct of the accused not resulting in conviction is not permissible.

(b) Specific instances of conduct. Specific instances of conduct are not admissible to prove character or a trait of character, except as follows:

(1) In civil cases where character or a trait of character is admissible as an element of a claim or defense, character may be proved by specific instances of conduct.

(2) In criminal cases where character or a trait of character is admissible under Pa.R.E. 404(a)(2), the accused may prove the complainant's character or trait of character by specific instances of conduct.

Pa.R.E. 608 (2005)

Rule 608. Evidence of character and conduct of witness

(a) Reputation evidence of character. The credibility of a witness may be attacked or supported by evidence in the form of reputation as to character, but subject to the following limitations:

(1) the evidence may refer only to character for truthfulness or untruthfulness; and

(2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by reputation evidence or otherwise.

(b) Specific instances of conduct. Except as provided in Rule 609 (relating to evidence of conviction of crime),

(1) the character of a witness for truthfulness may not be

attacked or supported by cross-examination or extrinsic evidence concerning specific instances of the witness' conduct; however,

(2) in the discretion of the court, the credibility of a witness who testifies as to the reputation of another witness for truthfulness or untruthfulness may be attacked by cross-examination concerning specific instances of conduct (not including arrests) of the other witness, if they are probative of truthfulness or untruthfulness; but extrinsic evidence thereof is not admissible.

Pa.R.E. 801 (2005)

Rule 801. Definitions

The following definitions apply under this article:

(a) Statement. A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.

(b) Declarant. A "declarant" is a person who makes a statement.

(c) Hearsay. "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

Pa.R.E. 802 (2005)

Rule 802. Hearsay Rule

Hearsay is not admissible except as provided by these rules, by other rules prescribed by the Pennsylvania Supreme Court, or by statute.

Rule 803. Hearsay exceptions; availability of declarant immaterial

The following statements, as hereinafter defined, are not excluded by the hearsay rule, even though the declarant is available as a witness:

(1) Present sense impression. A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

(2) Excited utterance. A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

(3) Then existing mental, emotional, or physical condition. A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition, such as intent, plan, motive, design, mental feeling, pain, and bodily health. A statement of memory or belief offered to prove the fact remembered or believed is included in this exception only if it relates to the execution, revocation, identification, or terms of declarant's will.

(4) Statements for purposes of medical diagnosis or treatment. A statement made for purposes of medical treatment, or medical diagnosis in contemplation of treatment, and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof, insofar as reasonably pertinent to treatment, or diagnosis in contemplation of treatment.

(5) Recorded recollection [not adopted].

(6) Records of regularly conducted activity. A memorandum, report, record, or data compilation, in any form, of acts, events, or conditions, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with Rule 902(11), Rule 902(12), or a statute permitting certification, unless the sources of information or other circumstances indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(7) Absence of entry in records kept in accordance with the provisions of paragraph (6) [not adopted].

(8) Public records and reports [not adopted].

(9) Records of vital statistics [not adopted].

(10) Absence of public record or entry [not adopted].

(11) Records of religious organizations. Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(12) Marriage, baptismal, and similar certificates. Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a religious

organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

(13) Family records. Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like.

(14) Records of documents affecting an interest in property. The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office.

(15) Statements in documents affecting an interest in property. A statement contained in a document, other than a will, purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

(16) Statements in ancient documents. Statements in a document in existence thirty years or more the authenticity of which is established.

(17) Market reports, commercial publications. Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

(18) Learned treatises [not adopted].

(19) Reputation concerning personal or family history. Reputation among members of a person's family by blood, adoption, or marriage, or among a person's associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history.

(20) Reputation concerning boundaries or general history. Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the community or State or nation in which located.

(21) Reputation as to character. Reputation of a person's character among associates or in the community.

(22) Judgment of previous conviction [not adopted].

(23) Judgment as to personal, family, or general history or boundaries [not adopted].

(24) Other exceptions [not adopted].

(25) Admission by party-opponent. The statement is offered against a party and is (A) the party's own statement in either an individual or a representative capacity, or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (E) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy. The contents of the statement may be considered but are not alone sufficient to establish the

declarant's authority under subdivision (C), the agency or employment relationship and scope thereof under subdivision (D), or the existence of the conspiracy and the participation therein of the declarant and the party against whom the statement is offered under subdivision (E).

Pa.R.E. 806 (2005)

Rule 806. Attacking and supporting credibility of declarant

When a hearsay statement has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would be admissible for those purposes if declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with the declarant's hearsay statement, is not subject to any requirement that the declarant may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine the declarant on the statement as if under cross-examination.

Pa.R.E. 901 (2005)

Rule 901. Requirement of authentication or identification

(a) General provision. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

(b) Illustrations. By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:

(1) *Testimony of witness with knowledge.* Testimony that a matter is what it is claimed to be.

(2) *Nonexpert opinion on handwriting.* Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation.

(3) *Comparison by trier or expert witness.* Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated.

(4) *Distinctive characteristics and the like.* Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.

(5) *Voice identification.* Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.

(6) *Telephone conversations.* Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business, if (A) in the case of a person, circumstances, including self-identification, show the person answering to be the one called, or (B) in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone.

(7) *Public records or reports.* Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept.

(8) *Ancient documents or data compilation.* Evidence that a

document or data compilation, in any form, (A) is in such condition as to create no suspicion concerning its authenticity, (B) was in a place where it, if authentic, would likely be, and (C) has been in existence 30 years or more at the time it is offered.

(9) *Process or system.* Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.

(10) *Methods provided by law.* Any method of authentication or identification provided by statute or by other rules prescribed by the Supreme Court.

Pennsylvania Rules of Professional and Judicial Conduct

Pa. RPC 3.7 (2005)

Rule 3.7. Lawyer as Witness

(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:

(1) the testimony relates to an uncontested issue;

(2) the testimony relates to the nature and value of legal services rendered in the case; or

(3) disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

Pa. Code Judicial Conduct 2 (2005)

Canon 2. A Judge Should Avoid Impropriety and the Appearance of Impropriety in All His Activities

A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge should not allow his family, social, or other relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interests of others; nor should he convey or knowingly permit others to convey the impression that they are in a special position to influence him. He should not testify voluntarily as a character witness.

Note: Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. He must expect to be the subject of constant public scrutiny. He must therefore accept restrictions on his conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

The testimony of a judge as a character witness injects the prestige of his office into the proceeding in which he testifies and may be misunderstood to be an official testimonial. This Canon, however, does not afford him a privilege against testifying in response to an official summons.

Pa. Code Judicial Conduct 3 (2005)

Canon 3. A Judge Should Perform the Duties of His Office Impartially and Diligently

The judicial duties of a judge take precedence over all his other activities. His judicial duties include all the duties of his office prescribed by law. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities.

(1) A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge should maintain order and decorum in proceedings before him.

(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity, and should require similar conduct of lawyers, and of his staff, court officials, and others subject to his direction and control.

Note: The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Courts can be efficient and businesslike while being patient and deliberate.

(4) A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law, and, except as authorized by law, must not consider ex parte communications concerning a pending proceeding.

(5) A judge should dispose promptly of the business of the court.

Note: Prompt disposition of the court's business requires a judge to devote adequate time to his duties, to be punctual in attending court and expeditious in determining matters under

submission, and to insist that court officials, litigants and their lawyers cooperate with him to that end.

(6) A judge should abstain from public comment about a pending proceeding in any court, and should require similar abstention on the part of court personnel subject to his direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

Note: "Court personnel" does not include the lawyers in a proceeding before a judge. The conduct of lawyers is governed by DR 7-107 of the Code of Professional Responsibility.

(7) A judge should prohibit broadcasting, televising, recording or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions, except that a judge may authorize:

(a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record, or for other purposes of judicial administration;

(b) the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings;

(c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

(i) the means of recording will not distract participants or impair the dignity of the proceedings; and

(ii) the parties have consented, and the consent to being

depicted or recorded has been obtained from each witness appearing in the recording and reproductions; and

(iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and

(iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

(d) the use of electronic broadcasting televising, recording and taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions of any trial court non-jury civil proceeding, however, for the purposes of this subsection "civil proceedings" shall not be construed to mean a support, custody or divorce proceeding. Subsection (iii) and (iv) shall not apply to non-jury civil proceedings as heretofore defined. No witness or party who expresses any prior objection to the judge shall be photographed nor shall the testimony of such witness or party be broadcast or telecast. Permission for the broadcasting, televising, recording and photographing of any civil non-jury proceeding shall have first been expressly granted by the judge, and under such conditions as the judge may prescribe in accordance with the guidelines contained in this Order.

B. Administrative Responsibilities.

(1) A judge should diligently discharge his administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

(2) A judge should require his staff and court officials subject to his direction and control to observe the standards

of fidelity and diligence that apply to him.

(3) A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware.

Note: Disciplinary measures may include reporting a judge's or lawyer's misconduct to an appropriate disciplinary body.

(4) A judge should not make unnecessary appointments. He should exercise his power of appointment only on the basis of merit, avoiding favoritism. He should not approve compensation of appointees beyond the fair value of services rendered.

Note: Appointees of the judge include officials such as referees, commissioners, special masters, receivers, guardians and personnel such as clerks, secretaries, and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by this subsection.

C. Disqualification.

(1) A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where:

(a) he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning

it;

Note: A lawyer in a governmental agency does not necessarily have an association with other lawyers employed by that agency within the meaning of this subsection; a judge formerly employed by a governmental agency, however, should disqualify himself in a proceeding if his impartiality might reasonably be questioned because of such association.

(c) he knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a substantial financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(d) he or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

Note: The fact that a lawyer in a proceeding is affiliated with a law firm with which a lawyer-relative of the judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances, the fact that "his impartiality might reasonably be questioned" under Canon 3C(1), or that the lawyer-relative is known by the judge to have an interest in the law firm that could be "substantially affected by the outcome of the proceeding" under Canon 3C(1)(d)(iii) may require his disqualification.

(iii) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) is to the judge's knowledge likely to be a material witness in the proceeding.

(2) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

(3) For the purposes of this section:

(a) the degree of relationship is calculated according to the civil law system;

Note: According to the civil law system, the third degree of relationship test would, for example, disqualify the judge if his or his spouse's father, grandfather, uncle, brother, or niece's husband were a party or lawyer in the proceeding, but would not disqualify him if a cousin were a party or lawyer in the proceeding.

(b) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

(c) "financial interest" means ownership of a legal or equitable interest, if substantial, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:

(i) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;

(ii) an office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;

(iii) the proprietary interest of a policy holder in a mutual

insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a substantial "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) ownership of securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of securities.

Pa. R.C.P. No. 1910.9 (2005)

Rule 1910.9. Discovery

(a) Except as provided in Rule 1910.11(j) and Rule 1910.12(c), there shall be no discovery in an action for support unless authorized by special order of court.

(b) Where a party is employed, the court shall ascertain the party's earnings and may enter an order directing the employer to furnish earnings information to the court as provided by Rule 1910.28.

Pa. R.C.P. No. 1910.16 (2005)

Rule 1910.16. Support Order. Allocation

(a) In an order awarding child support and spousal support, the court may on its own motion or upon the motion of either party

(1) make an unallocated award in favor of the spouse and one or more
children, or

(2) state the amount of support allocable to the spouse and the amount

allocable to each child.

(b) An unallocated order in favor of the spouse and one or more children shall be a final order as to all claims covered in the order. No motion for post-trial relief may be filed to the final order.

Pa. R.C.P. No. 1910.16-2 (2005)

Rule 1910.16-2. Support Guidelines. Calculation of Net Income

The amount of support to be awarded is based in large part upon the parties' monthly net income.

(a) Monthly Gross Income. Monthly gross income is ordinarily based upon at least a six-month average of all of a party's income. The term "income" is defined by the support law, 23 Pa.C.S. § 4302, and includes income from any source. The statute lists many types of income including, but not limited to:

(1) wages, salaries, bonuses, fees and commissions;

(2) net income from business or dealings in property;

(3) interest, rents, royalties, and dividends;

(4) pensions and all forms of retirement;

(5) income from an interest in an estate or trust;

(6) Social Security disability benefits, Social Security retirement benefits, temporary and permanent disability benefits, workers' compensation and unemployment compensation;

(7) alimony if, in the discretion of the trier of fact, inclusion of part or all of it is appropriate; and

(8) other entitlements to money or lump sum awards, without regard to source, including lottery winnings, income tax refunds, insurance compensation or settlements; awards and verdicts; and any form of payment due to and collectible by an individual regardless of source.

(b) Treatment of Public Assistance, SSI Benefits and Social Security Payments to a Child Due to a Parent's Death, Disability or Retirement.

(1) Neither public assistance nor Supplemental Security Income (SSI) benefits shall be counted as income for purposes of determining support.

(2) If a child for whom support is sought is receiving Social Security benefits as a result of a parent's retirement, death or disability, the benefits the child receives shall be added to the combined monthly net incomes of the obligor and obligee to calculate the income available for support on the vertical axis of the basic child support schedule set forth in Rule 1910.16-3. The presumptive amount of support as set forth on the schedule at the combined income of the obligee, obligor and child's benefits shall then be reduced by the amount of the child's benefits before apportioning the remaining support obligation between the parties pursuant to Rule 1910.16-4. For purposes of determining the support obligation of a surviving parent when the child is receiving benefits as the result of the other parent's death, the income of a non-parent obligee who is caring for a child but has no support obligation to that child shall include only those funds the obligee is receiving on behalf of the child.

Example # If the obligor has net monthly income of $ 1200

per month; the obligee has net monthly income of $ 800; and the child receives Social Security derivative benefits of $ 300 per month as a result of either the obligor's or obligee's retirement or disability, then the total combined monthly net income is $ 2,300. Using the schedule at Rule 1910.16-3 for one child, the amount of support is $ 539 per month. From that amount, subtract the amount the child is receiving in Social Security derivative benefits ($ 539 minus $ 300 equals $ 239). Then, apply the formula at Rule 1910.16-4 to apportion the remaining child support amount of $ 239 between the obligor and the obligee in proportion to their respective incomes. Obligor's $ 1200 net income per month is 60% of the total of obligor's and obligee's combined net monthly income. Thus, obligor's support obligation would be 60% of $ 239, or $ 143.40, per month.

Example 2. Two children live with grandmother who receives $ 400 per month in Social Security death benefits for the children as a result of their father's death. Grandmother also receives $ 500 per month from a trust established by father for the benefit of the children. Grandmother is employed and earns $ 2,000 net per month. Grandmother seeks support from the children's mother, who earns $ 1,500 net per month. For purposes of calculating mother's support obligation, grandmother's income will be $ 500, the amount she receives on behalf of the children from the trust. Therefore, obligee's and obligor's combined net monthly incomes total $ 2,000. Add to that the $ 400 in Social Security benefits grandmother receives for the children to find the basic child support amount in Rule 1910.16-3. The basic support amount at the $ 2,400 income level for two children is $ 811. Subtracting from that amount the $ 400 in Social Security derivative benefits grandmother receives for the children, results in a basic support amount of $ 411 to be apportioned between the parties. As mother's income is 75% of the parties' combined income of $ 2000, her support obligation to grandmother is $ 308 per month.

(c) Monthly Net Income.

(1) Unless otherwise provided in these rules, the court shall deduct only the following items from monthly gross income to arrive at net income:

(A) federal, state, and local income taxes;

(B) F.I.C.A. payments and non-voluntary retirement payments;

(C) union dues; and

(D) alimony paid to the other party.

(2) In computing a spousal support or alimony pendente lite obligation, the court shall deduct from obligor's monthly net income all of his or her child support obligations and any amounts of spousal support, alimony pendente lite or alimony being paid to former spouses.

(d) Reduced or Fluctuating Income.

(1) *Voluntary Reduction of Income.* Where a party voluntarily assumes a lower paying job, there generally will be no effect on the support obligation. A party will ordinarily not be relieved of a support obligation by voluntarily quitting work or by being fired for cause.

(2) *Involuntary Reduction of Income.* No adjustments in support payments will be made for normal fluctuations in earnings. However, appropriate adjustments will be made for substantial continuing involuntary decreases in income.

(3) *Seasonal Employees.* Support orders for seasonal employees, such as construction workers, shall ordinarily be

based upon a yearly average.

(4) *Income Potential.* Ordinarily, a party who wilfully fails to obtain appropriate employment will be considered to have an income equal to the party's earning capacity. Age, education, training, health, work experience, earnings history and child care responsibilities are factors which shall be considered in determining earning capacity.

(e) Net Income Affecting Application of the Child Support Guidelines.

(1) *Low Income Cases.*

(A) When the obligor's monthly net income and corresponding number of children fall into the shaded area of the schedule set forth in Rule 1910.16-3, the basic child support obligation shall be calculated using the obligor's income only. For example, where obligor has monthly net income of $ 750, the presumptively correct amount of support for three children is $ 184 per month. This amount is determined directly from the schedule in Rule 1910.16-3.

(B) In computing a basic spousal support or alimony pendente lite obligation, the presumptively correct amount of support shall not reduce the obligor's net income below $ 550 per month. For example, if obligor earns $ 600 per month and obligee earns $ 300 per month, the formula in Part IV of Rule 1910.16-4 would result in a support obligation of $ 120 per month. Since this amount leaves the obligor with only $ 480 per month, it must be adjusted so that obligor retains at least $ 550 per month. The presumptively correct minimum amount of spousal support, therefore, is $ 50 per month in this case.

(C) When the obligor's monthly net income is $ 550 or less, the court may award support only after consideration of the

obligor's actual living expenses.

(2) *High Income Child Support Cases.* When the parties' combined net income exceeds $ 15,000 per month, child support shall be calculated pursuant to *Melzer v. Witsberger*, 505 Pa. 462, 480 A.2d 991 (1984). The presumptive minimum amount of child support shall be obligor's percentage share of the highest amount of support which can be derived from the schedule for the appropriate number of children and using the parties' actual combined income to determine obligor's percentage share of this amount. The court may award an additional amount of child support based on the parties' combined income and the factors set forth in *Melzer*. The *Melzer* analysis in high income child support cases shall be applied to all of the parties' income, not just to the amount of income exceeding $ 15,000 per month. In a *Melzer* analysis case, the presumptive minimum remains applicable.

For example, where obligor and obligee have monthly net incomes of $ 17,000 and $ 4,000 respectively, the presumptive minimum amount of child support for three children is calculated as follows: using the formula in Rule 1910.16-4, determine the parties' percentage shares of income based on their actual combined income--81% and 19% respectively of $ 21,000. Using the schedule in Rule 1910.16-3, find the highest possible combined child support obligation for three children--$ 3,480. Obligor's percentage share of the combined obligation is 81% of $ 3,480, or $ 2,818. This is the presumptive minimum amount of child support that he or she must pay for three children. Since this amount is derived from the schedule in Rule 1910.16-3, which is limited to combined household income of $ 15,000, the court may award an additional amount of support based on the factors set forth in *Melzer*.

(f) Dependency Tax Exemption. In order to maximize the

total income available to the parties and children, the court may, as justice and fairness require, award the federal child dependency tax exemption to the non-custodial parent, or to either parent in cases of equally shared custody, and order the other party to execute the waiver required by the Internal Revenue Code, 26 U.S.C.A. § 152(e). The tax consequences resulting from an award of the child dependency exemption must be considered in calculating each party's income available for support.

Pa. R.C.P. No. 1910.19 (2005)

Rule 1910.19. Support Modification. Termination. Guidelines as Substantial Change in Circumstance

(a) A petition for modification or termination of an existing support order shall specifically aver the material and substantial change in circumstances upon which the petition is based. A new guideline amount resulting from new or revised support guidelines may constitute a material and substantial change in circumstances. The existence of additional income, income sources or assets identified through automated methods or otherwise may also constitute a material and substantial change in circumstances.

(b) The procedure upon the petition shall be in accordance with Rule 1910.10 et seq.

(c) Pursuant to a petition for modification, the trier of fact may modify or terminate the existing support order in any appropriate manner based upon the evidence presented.

(d) All charging orders for spousal support and alimony pendente lite shall terminate upon the death of the payee spouse.

(e) Within one year of the date a child who is the subject of

a child support order reaches eighteen (18) years of age, the domestic relations section shall issue an emancipation inquiry and notice to the obligee, with a copy to the obligor, seeking the following information:

(1) confirmation of the child's date of birth, date of graduation or withdrawal from high school;

(2) whether the child has left the obligee's household and, if so, the date of departure;

(3) the existence of any agreement between the parties requiring payments for the benefit of the child after the child has reached age eighteen (18) or graduated from high school; and

(4) any special needs of the child which may be a basis for continuing support for that child beyond the child's eighteenth birthday or graduation from high school, whichever is last to occur.

The notice shall advise the obligee that if the inquiry is not returned within thirty (30) days of mailing or if there is no agreement or the child does not have any special needs, the charging order may be modified or terminated by the court. When no other children are subjects of the child support order and the obligee either does not return the emancipation inquiry within thirty (30) days of its mailing or does not assert grounds for continuing support for the child, then the court shall have the authority to administratively terminate the child support charging order without further proceedings at any time on or after the last to occur of the date the last child reaches age eighteen (18) or graduates from high school. Termination of the charging order shall not affect any arrears accrued through the date of termination. The court shall have the authority to enter an order requiring the obligor to pay on arrears in an amount equal to the amount of the

charging order until all arrears are paid.

If the order applies to another child or children and/or the obligee asserts that there is an agreement between the parties or that a child has special needs requiring continued support, then the domestic relations section may schedule a conference to determine if the charging order should be modified.

Pa. R.C.P. No. 1910.24 (2005)

Rule 1910.24. Support Order. Enforcement. Judgment for Arrearages. Petition to Correct Judgment. Execution

(a) On and after the date it is due, overdue support shall constitute a judgment against the obligor as provided by law. The prothonotary shall enter the judgment of record upon the proper docket and in the judgment index either at the direction of the court or upon praecipe of a party or the domestic relations section. The judgment must be accompanied by a written certification showing that obligor owes overdue support pursuant to an order of court.

(b) A petition to correct the judgment shall be limited to the following grounds: (1) no overdue support exists under the support order or (2) there is a mistake in the amount of overdue support. The petition initially shall be determined before a conference officer or hearing officer in the same manner as an original proceeding for support. Except as provided by order of court, the filing of a petition to correct a judgment shall not stay the proceedings.

(c) The judgment may be enforced against the obligor's real or personal property as provided by Rules 3001 through 3011, governing transfer of judgments, and Rules 3101 through 3149, governing enforcement of judgments for the payment of money.

Pa. R.C.P. No. 1920.33 (2005)

Rule 1920.33. Joinder of Related Claims. Distribution of Property. Enforcement

(a) Within ninety days after service of a pleading or petition containing a claim for determination and distribution of property under Section 3502 of the Divorce Code, each party shall file an inventory specifically describing all property owned or possessed at the time the action was commenced. The inventory shall set forth as of the date of the filing of the complaint

(1) a specific description of all marital property in which either or both have a legal or equitable interest individually or with any other person and the name of such other person; and

(2) a specific description of all property in which a spouse has a legal or equitable interest which is claimed to be excluded from marital property and the basis for such exclusion.

(b) Within the time required by order of court or written directive of the master or, if none, at least sixty days before the scheduled hearing on the claim for the determination and distribution of property, each party shall file and serve upon the other party a pre-trial statement. The pre-trial statement shall include the following matters, together with any additional information required by special order of the court:

(1) a list of assets, which may be in chart form, specifying

(i) the marital assets, their value, the date of the valuation, whether any portion of the value is non-marital, and any liens or encumbrances thereon, and

(ii) the non-marital assets, their value, the date of the valuation, and any liens or encumbrances thereon;

(2) the name and address of each expert whom the party intends to call at trial as a witness. A report of each expert witness listed shall be attached to the pre-trial statement. The report shall describe the witness's qualifications and experience and state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion;

(3) the name, address and a short summary of the testimony of each person, other than the party, whom the party intends to call at trial as a witness;

(4) a list of all of the exhibits which the party expects to offer in evidence, each containing an identifying mark. Any exhibits that do not exceed three pages shall be attached to the pre-trial statement, and any exhibits which exceed three pages shall be described;

(5) the party's gross income from all sources, each payroll deduction, and the party's net income, including the party's most recent state and federal income tax returns and pay stubs;

(6) if the party intends to offer any testimony as to his or her expenses, a current expense statement in the form required by the practice and procedure governing an action in support;

(7) the value of a pension or retirement benefits, the marital portion thereof, and the facts and documentation upon which the party relies to support the valuation;

(8) if there is a claim for counsel fees, the amount of fees to

be charged, the basis for the charge, and a detailed itemization of the services rendered;

(9) where there is a dispute, the description and value of any items of tangible personal property, the method of evaluating each item, and the evidence, including documentation, to be offered in support of the valuation;

(10) a list of marital debts including the amount of each debt as of the date of separation, the date on which the debt was initially incurred, the initial amount of the debt and its purpose, the amounts and dates of payments made since the date of separation, and the evidence that will be offered in support [FN1] the claim;

(11) a proposed resolution of the economic issues.

(c) If a party fails to file either an inventory as required by subdivision (a) or a pre-trial statement as required by subdivision (b), the court may make an appropriate order under Rule 4019(c) governing sanctions.

(d)(1) A party who fails to comply with a requirement of subdivision (b) of this rule shall, except upon good cause shown, be barred from offering any testimony or introducing any evidence in support of or in opposition to claims for the matters not covered therein.

(2) A party shall, except upon good cause shown, be barred from offering any testimony or introducing any evidence that is inconsistent with or which goes beyond the fair scope of the information set forth in the pre-trial statement.

(e) An order distributing property under Section 3502 of the Divorce Code may be enforced as provided by the rules governing actions for support and divorce, and in the Divorce Code.

Pa. R.C.P. No. 1930.5 (2005)

Rule 1930.5. Discovery in Domestic Relations Matters

(a) There shall be no discovery in a simple support, custody or Protection from Abuse proceeding unless authorized by order of court.

(b) Discovery shall be available without leave of court in accordance with R. C. P. 4001 et seq. in alimony, equitable distribution, counsel fee and expense and complex support proceedings.

FILED
DEC 3 0 2005
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 05-419

In The

Supreme Court of the United States

MARY ELLEN CHAJKOWSKI *Pro se*
Petitioner/alternate payee

v.

JOSEPH J. BOSICK, *et al.*,
Respondent/self-employed participant and trustee,
Law firm employer-plan and plan trustees,
Pennsylvania judges.

On Petition for *Writ of Certiorari*
To the United States Court of Appeals Third Circuit

Petition for Rehearing

Mary Ellen Chajkowski *Pro se*
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412-904-2222

QUESTIONS PRESENTED

I.

Whether Waiver response, to allegations that breach of *fiduciary* duty violated due process, merits an exercise of the supervisory authority of this Court?

ANSWER: Yes.

II.

Whether denying *Certiorari* with no R.16.1 Summary Disposition on the Merits contravenes federal law?

a) *alternate payee* requests declaratory relief to enforce statutory disclosure from trustees;

b) declaratory relief essential to determine tax liability cannot be enforced without an order.

ANSWER: Yes.

PARTIES

Suit to enforce ERISA component of divorce.

MARY ELLEN CHAJKOWSKI *Pro se,*

Petitioner/alternate payee

v.

JOSEPH J. BOSICK, *et al.*,

Respondent/self-employed participant and trustee,
Law firm employer-plan and plan trustees,
Pennsylvania judges.

TABLE OF CONTENTS

Petition for Rehearing

Questions presented.....i

Parties.....ii

Table of Contents.....iii

Table of Authorities.....iv

Certification of Counsel.....v

Order Reviewed to be Reviewed.....vi

Jurisdictional Statement.....vi

Statement of the Case.....1

Argument.....3

Conclusion.....10

TABLE OF AUTHORITIES

Cases

Exxon Mobil v. Saudi Basic, 125 S.Ct. 1521 (2005).....1, 4

Firestone Tire Co. v. Bruch, 489 U.S.101(1989).....3

Fuentes v. Shevin, 407 U.S. 67 (1972).....5

Mullane v. Central Hanover B& T, 339 U.S. 306, 314, 70 S.Ct. 652,657 (1950).....3

Pinto v. Reliance Standard Life Ins. Co., 214 F3d 377 (3d Cir. 2000). 4

TENN-FLA, a partnership, v. First Union National Bank of Florida, as trustee, US D.Ct. for W.D. of Tennessee, W.D., 229 B.R. 720; (1999).....6,7,8.9

Thomas v. NCO Financial, Inc., 00-cv-05118, U.S. D.Ct. E.D. of Pennsylvania (2004).....3

Rules of the Supreme Court of the United States,
Rule. 29.6.....1
Rule 44.....*Passim.*

Suit to enforce breach of *fiduciary* duty to make statutory disclosures to *alternate payee* in litigation.

CERTIFICATION OF COUNSEL

I certify this Petition for Rehearing is restricted to substantial grounds not previously presented. I present this Petition in good faith and not for delay. Federal statutory rights and duties have not been enforced in equitable distribution litigation.

Substantial Grounds for Rehearing

Enforce *fiduciary* duty of Respondents and courts;
Enforce U.S. Supreme Court request for response;
Enforce this court's Rule 29.6 corporate disclosure;
Enforce Exxon as controlling jurisdictional waiver;
Enforce disclosure of trustee-controlled assets, as a 'Notice' requirement of the Due Process Clause.

Intervening Grounds for Rehearing

Appellate failure to correct errors may be widespread.
State Supreme Court denied *Allocatur* in 2004;
November 2005 state judicial retention election:
1) removed one state Supreme Court justice;
2) retained one Supreme Court justice by 54%.

Self-employed *plan* trustee controls the assets.

Plan disclosures are necessary to assess tax liability of *alternate payee*, related to 2005 order that Petitioner pay $100,00 to Respondent, as 2002 order modified unallocated APL/child support 1998-2002. 403(a) *plan* summary, provided to DRO in response to support subpoena, states it is not an ERISA plan.

Respectfully submitted,

_____

Mary Ellen Chajkowski, Petitioner *Pro se*

JURISDICTIONAL STATEMENT

Order to be Reviewed

Chajkowski v. Bosick, Petition for *Writ of Certiorari* denied, December 5, 2005.

Statutes Conferring Jurisdiction

Rules of the Supreme Court of the United States,
Rule 44, Petition for Rehearing, Substantial and Intervening Grounds not previously presented.
Rule 29.6 - Corporate Disclosure.
Rule 10 (a) and (c).
Rule 11 – Public importance.

The Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such Regulations as the Congress shall make. U.S.C.A. Const. Art. III s2, cl.2

Cases in the courts of appeals may be reviewed by the Supreme Court by: (1) *writ of Certiorari* granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree. 28 U.S.C. s.1254 (1988).

U.S. Const. Amend. XIV, section 1 "....nor shall any State deprive any person of life, liberty, or property, without due process of law.

Statement of the Case

An *alternate payee* suit to enforce ERISA component of a divorce action was *sua sponte* dismissed by a district court that waived jurisdiction relying on *Rooker Feldman* doctrine, affirmed by the appeal court contrary to Exxon Mobil v. Saudi Basic, 125 S.Ct. 1521 (2005).

The Supreme Court of the United States docketed the Petition for *Writ of Certiorari* and directed Respondents to Answer by a specific date.
a) Self-employed *plan participant-trustee*; the *plan-trustees*; and *plan* Respondents are represented by a law partner and filed one Waiver.
b) Pennsylvania judges filed a separate Waiver.
c) No Respondent filed R.12.6 Corporate Disclosure.

The Supreme Court of the United States did not construe Respondent Waiver in favor of Petitioner Instead, it denied a *Writ of Certiorari* without giving a reason and no summary disposition on the merits was entered, precluding finality, which failed to serve the mandate conferred by statutory jurisdiction.

Undisputed Complaint allegations constitute violation of law, penalties vary for each respondent subject to statutory and /or *fiduciary* duties to:

1) disclose information to the court;
2) disclose pursuant to a subpoena;
3) supplement material information;
4) admit evidence in good faith;
5) comply with law and procedure;
6) disclose assets to a former spouse;
7) obey APL/child support orders;
8) file an interim QDRO;
9) equitably enforce the law.

Respondents were construed as 'one' in error, here.

All retirement and deferred income assets are within possession and control of Respondent Bosick, a self-employed attorney licensed in PA since 1973. Petitioner Chajkowski, an elementary teacher until 1977, no paid employment while raising children, became a PA licensed attorney December 19, 2000, worked for $15 per hour in 2002, self-employed 2003 to date. Marital assets accrued for more than two decades include: insurance, securities, real estate and corporate assets. Non-marital assets were not filed.

Bosick's *fiduciary* duty as an officer of the court was not enforced,1998-2002, as he never once paid in full the unallocated APL/child support order. Judge Baer's order for $49,975 in arrears assessed a $0 penalty payment to the arrears [Appendix I, p. 44]. Bosick entered no interim QDRO, as ordered [Id. 19], which Pennsylvania judges failed to enforce.

Petitioner's right to *plan* information in the possession of self-employed *plan participant-trustee* and the *plan-trustee* Respondents has never been fully litigated; as the court accepted a 'counsel stipulation' of 'marital value' in place of verified *plan* evidence. Judge Eaton permitted counsel to withdraw without first entering Petitioner's QDRO, per 2002 equitable distribution order, an egregious exercise of discretion where Counsel filed the divorce action July 3, 1997 and stipulated 2001 on value of retirement, deferred income assets. The court refused to compel disclosure, entered a 2003 QDRO, a loss of $100,000 and 'froze' assets in Bosick's control [Id. at p.25].

Petitioner believes no 1998 support order was necessary. Failure to enforce disclosure laws in 1997 prolonged litigation. Forcing Petitioner to pay joint mortgages and refinance: to compensate for arrears, litigate divorce, pay law school and taxes, which state courts did not incorporate in equitable distribution.

Summary of the Argument

Lower courts recognize a *fiduciary* duty to enforce the rights and duties of 'protected persons'. "In execution of the court's *fiduciary* duty, the court must ensure that 'members of the class' [receive] the best 'notice' practicable under the circumstances..." Thomas v. NCO Financial, Inc., 00-cv-05118, U.S. D.Ct. E.D. of Pennsylvania (2004). Disclosure here is the best practicable notice under the circumstances and it satisfies the due process requirements of the Fifth Amendment to the U. S. Constitution. Id.

> "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them the opportunity to present their objections." Id. *Citing* Mullane v. Central Hanover B& T, 339 U.S. 306, 314, 70 S.Ct. 652,657 (1950).

Bosick has multiple *fiduciary* duties here: 1) as a practicing attorney and officer of the court; 2) as a party in divorce litigation; and 3) as a trustee, retaining authority to establish and amend deferred income *plans,* including trusts, while exercising possession and control of substantial marital assets.

Plan trustee respondents have *fiduciary* duties: as 1)officers of the court; 2) employers; 3) by statute.

The *fiduciary* respondents did not dispute complaint allegations that they profited from assets within their control at Petitioner's expense, a breach of duty subject to a *fiduciary* standard. Respondents reserve discretionary authority, Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 102 (1989), therefore, Petitioner's undisputed allegations warrant an *arbitrary and capricious* review. Id.at 111.

Fiduciary respondents fund and administer *plan* contributions, a conflict that warrants a heightened form of the *arbitrary and capricious* standard of review, Pinto v. Reliance Standard Life, 214 F.3d 377, 378 (3d Cir. 2000), as Respondents exercised discretion by waiving the right to defend actions inconsistent with an exercise of discretion by a *fiduciary* acting free of the interests that conflict with those of beneficiaries. This appeal court has held *fiduciaries* to a standard of care commensurate with their responsibilities. Pinto at 391. Factors this appeal court has used in deciding the severity of conflict: 1) the sophistication of the parties; 2) information accessible to the parties; 3) financial arrangements; and 4) exact status of the *fiduciary*. Pinto at 392.

Petitioner filed a *pro se* brief alleging *fiduciary* breach of duty, undisclosed assets, and losses that unjustly enrich self-employed *plans*, which Bosick failed to deny, his counsel arguing before the Pennsylvania Superior Court that Petitioner has alternate remedies to be heard on undisclosed assets. Petitioner must identify the assets in order to file a Constructive Trust in state court, which makes the suit for a Declaratory Judgment an independent claim.

In a capricious and arbitrary abuse of judicial discretion, the lower courts waived jurisdiction over undisputed claims that breach of *fiduciary* duty violated the law and occasioned loss to Petitioner, waiving jurisdiction contrary to controlling authority. "If a party presents in federal court an independent claim, even though it may deny a legal conclusion a state court has reached in a previous action to which that was party was also a party, then there is jurisdiction, and state law determines how preclusion would apply." Exxon Mobil v Saudi Basic, 125 S.Ct. 1521, 1517 (2005).

Under the Fourteenth Amendment, statutory rights may not be stripped away without due process of law. Fuentes v. Shevin, 407 U.S. 67, 81 (1972).

> The purpose of this requirement is not only to ensure abstract fair play. Its purpose, more particularly, is to minimize substantively unfair or mistaken deprivation of property, a danger that is especially great when the State seizes goods simply upon the application of and for the benefit of a private party. Id.

All economic issues, including child support, were litigated between the parties. Petitioner filed for divorce July3, 1997; the first support hearing was held February 1998, December 1998 Judge Baer, entered a support order [Appendix I, p. 33, 36], that modified the hearing officer's March 1998 [Id., p.27] unallocated APL/child support order, omitted health care, insurance, tuition, real estate expenses and excluded 401k contributions. No retroactivity or attorney fees were ever awarded 1997 to date.

Bosick filed for a 'complex' hearing on support in 1997, yet was granted 2002 retroactive modification arguing that support decisions should be referenced by support guidelines, reversing a request for 'complex' support consideration, which delayed an award for support nearly one year. Judge Eaton granted modification retroactive to 1998; ordered suspension of APL/child support as an unprecedented sanction for appealing the 2002 order. Petitioner was prejudiced and forced to generate self-supporting income, while appealing deprivation of property.

State courts, in *bias* or error, denied Petition to supplement evidence and denied due process on undisputed complaint allegations Petitioner was deprived of property interest protected by statute.